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**A TREATISE**  
**ON THE**  
**INCORPORATION AND ORGANIZATION**  
**OF CORPORATIONS**





A TREATISE  
ON THE  
INCORPORATION AND ORGANIZATION  
OF  
CORPORATIONS

CREATED UNDER THE "BUSINESS CORPORATION ACTS"  
OF THE SEVERAL STATES AND TERRITORIES  
OF THE UNITED STATES

INCLUDING THEREIN A SYNOPSIS-DIGEST OF THE GENERAL INCORPORATION ACTS  
OF THE SEVERAL COMMONWEALTHS, WITH DECISIONS BEARING THEREON;  
ALSO, FORMS FOR DRAWING CHARTERS UNDER THE LAWS OF THE  
SEVERAL STATES AND TERRITORIES; GENERAL AND  
SPECIFIC OBJECT CLAUSES FOR INSERTION IN  
CHARTERS; BY-LAWS, MINUTES, ETC., ETC.

BY

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*OF THE NEW YORK BAR*

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CONSTITUTION OF 1793," ETC.

SECOND EDITION  
ENLARGED, AND REVISED TO JANUARY 1, 1906

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TO  
**JOHN B. BROWN, Esq.**

**OF THE ILLINOIS BAR**

**THIS WORK IS DEDICATED BY HIS FRIEND, COLLEGE CLASSMATE  
AND FIRST LAW PARTNER**

**THE AUTHOR**





## PREFACE TO THE SECOND EDITION.

THE material changes made in the Business Corporation Acts by the legislatures of the several States during the winter of 1905 have rendered necessary a complete revision of "Part II" of the present work. In bringing this revision up to January 1, 1906, there have been added some five hundred additional cases, making the total number of cases digested some twenty-three hundred in number. At the same time the forms for drawing charters under the laws of the several States and Territories have been thoroughly revised, and a number of new and valuable forms have been added to "Part III" of the present work. With the co-operation of State officials and corporation counsel in every State and Territory, it is believed that all material errors in the digests of the business corporation acts have been eliminated. Much additional space has been devoted in "Part II" to the amendment of charters, the subject matter of preferred stock, and the transaction of business by foreign corporations.

THOMAS GOLD FROST.

NEW YORK, February 1, 1906.



## P R E F A C E

THE present work might with no inconsiderable degree of fitness have been entitled "A Treatise on Comparative Incorporation Law in the Several Commonwealths of the United States." Such a work if properly prepared should not fail to interest the active practitioner as well as the public at large. One of the greatest difficulties met with in the preparation of the volume here presented, has been to successfully condense the subject matter thereof without eliminating any matters of real importance. If, in place of the customary copious references so freely offered in support of principles of corporation law universally considered to be sound, the reader finds only a single citation, he may rest assured that careful investigation has satisfied the author that it represents the prevailing doctrine relative to the particular proposition in support of which it has been cited. This method, it is believed, will meet with favor at the hands of the profession for the following reasons :

The vast majority of the decisions of the courts of this country rendered prior to 1870, in so far as they relate to questions of corporation law, are for the most part a veritable legal "junk-shop" representing either what is now "horn-book law," or else overruled cases. Many of these contain enunciation of principles of corporation law the soundness of which no one in these days would venture to dispute, or else they represent propositions of law which are no longer regarded as sound. The corporation law of to-day, by engrafting into its subject matter accepted principles of agency and estoppel, has assumed a form which the corporation lawyer of fifty years ago would find great difficulty in recognizing.



In the preparation of this work utility and accuracy have been kept constantly in mind. The writer has made free use of certain exceptional facilities that have been open to him through his professional connections, including access to a large number of forms as well as a great deal of correspondence with state officials in the various commonwealths. The forms for drawing charters in the various states, while prepared by the author, have also been approved in every instance by competent attorneys who reside in the state under the laws of which the draft of the charter was made.

All of this has been, it is hoped, to the advantage of the profession and the public at large.

THOMAS GOLD FROST

76 WILLIAM STREET, NEW YORK CITY, N. Y.

December 1, 1904.

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# A TREATISE

## ON THE

### INCORPORATION AND ORGANIZATION OF CORPORATIONS.

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#### INTRODUCTION.

THE development of the modern business corporation act has been most curious and interesting. Previous to the year 1837 charters could be procured only by special act of the legislature. In that year the legislature of Connecticut passed the first business corporation act that went into force and effect in the United States. It was drawn by Theodore Hinsdale, of Winchester, Connecticut, a Yale graduate of the class of 1821. As this act forms the basic work of most of the business corporation acts of to-day, it deserves more than passing notice. It was drafted for the purpose of permitting incorporation thereunder of companies for the purpose of carrying on a manufacturing, mechanical, mining, and quarrying business. The statutory powers of corporations incorporated thereunder were enumerated as follows: To sue and be sued, to have a common seal, to elect officers, to fix their compensation and duties, to establish by-laws, to employ agents, mechanics, and laborers. Incorporation was limited to one purpose, to be distinctly and definitely set forth in the articles of agreement which were required to be signed by all the incorporators. A board of directors was provided for; also a president, secretary, and treasurer. Power was given to the corporation to forfeit stock of stockholders for non-payment of stock subscriptions. The corporation also had a lien upon the stock of its members for debts. After the articles were signed and the corporation organized and the articles of association published,

the officers were required to make and file with the Secretary of State (and a duplicate thereof with the town clerk of the town where the corporation was to transact its business) a certificate setting forth, (1) the purpose of the corporation; (2) the amount of its capital stock; (3) the names of stockholders and the number of shares held by each. Annual reports were made obligatory. Stockholders were made liable for all capital refunded to them, and made personally liable for the declaration of illegal dividends.

The passage as well as the operation of the first Connecticut act was watched closely by the legislative bodies of the neighboring States, with the result that by 1850 there were in the neighborhood of a score of general business corporation acts in force and effect in various parts of the country modelled with some few exceptions closely after the Connecticut act above referred to. The operation of these general acts was so satisfactory that a new element appeared in the passage by various States of constitutional amendments forbidding absolutely the creation of private corporations for purposes of profit by special act of the legislature. This has been continued until at the present time special charters cannot be procured save in seven of the Commonwealths.

The next development is to be noted along the line of enlargement of corporate purposes and powers. Gradually the restriction of the earlier incorporation acts limiting the right and benefits thereof to those desiring to incorporate companies for manufacturing and mining purposes was removed so as to permit practically of incorporation for any lawful purpose. At the same time there came a demand on the part of prospective incorporators for greater powers than were permitted at common law, —such, for example, as the right to perform constituent acts outside of the domiciliary State, to hold stock and bonds in other corporations, and to amend their charters unrestrictedly. In this way there came to be found in many of the corporation acts a large number of extraordinary powers which were not recognized at common law. This served to greatly popularize the corporate form of organization as compared with individual, partnership, or joint stock company enterprises. The result which followed was natural. The several State legislatures proceeded one after the other to enact statutes compelling incorporators when organizing

## INTRODUCTION.

corporations to pay a license tax graduated according to the capitalization of the corporation. In this way certain States — notably New Jersey, New York, Delaware, West Virginia, and Maine — have secured a very large revenue — all to the satisfaction of the average tax-payer.

It is characteristic of State legislatures that they never fail to take advantage of an opportunity to relieve a majority of voters from the burdens of taxation at the expense of a few. Doubtless it was with this laudatory purpose in mind that they next proceeded to enact statutes requiring corporations to pay an annual license tax based upon either their authorized capitalization, the amount of capital invested in the State, or the amount of dividends paid annually to stockholders. The success of a few States in securing large revenues from both organization and license taxes resulted in legislative action in other States taken with a view to securing a proper share of the incorporation business, which had hitherto enured to the benefit of two or three favored Commonwealths. This may be properly described 'as the era of the "tramp corporation." That is, it was about this time that there appeared a well-defined tendency on the part of incorporators to go outside of the State of their residence for a charter under which they planned to do business exclusively in some foreign State. The result has been that incorporators have gradually accustomed themselves to going for their charters to those States which are commonly known as leading incorporating States. In this group will be found at the present time New Jersey, New York, Delaware, West Virginia, South Dakota, Maine, Nevada, Arizona, Connecticut, District of Columbia, Virginia, Oklahoma, North Carolina, and Alabama.

Speaking in general terms, it may be said that a great majority of the business corporation acts in force in this country to-day are sadly in need of revision. Thus, for example, the incorporation acts of Iowa, Nebraska, New Hampshire, Vermont, Rhode Island, Arizona, Mississippi, and the District of Columbia are more or less crude in construction, and lack many of the essentials of complete and satisfactory acts. The incorporation laws of Georgia, Pennsylvania, and Maryland are veritable "legal antiques," and would bear revision without any injury whatever to the best interests of those Commonwealths. The incorporation acts of Indiana, Minnesota, Tennessee, Pennsylvania, and Louisiana are

so involved as to lead to almost certain confusion when an attempt is made to take advantage of their provisions.

In regard to the attitude taken by the legislatures of the several States in the framing of these General Acts, attention is called to some remarks of the Committee on Corporations addressed to the legislature of Massachusetts in 1903, which were as follows :

“The history of corporations, as well as the logic of the case, shows that there are possible two general theories as to the State’s duties in creating corporations. First, the old theory that being creatures of the State, they should be guaranteed by it to the public in all particulars of responsibility and management; and the modern, quite opposite theory that, in the absence of fraud in its creation or government, an ordinary business corporation should be allowed to do anything that an individual can do. Under the old theory the capital stock of a corporation was, in the law, considered to be a guarantee fund for the payment of creditors as well as affording a method of corporate enterprise. There resulted from this principle not only the fundamental proposition that the capital stock, being in the nature of a guarantee fund, should be paid for at its par value in actual cash, but all the other provisions to protect creditors or other persons having dealings with the corporation, such as that the debts of a corporation should not exceed its capital stock, designed primarily in the interest of creditors, and secondarily in that of the stockholders, who are looked after as carefully as if they were wards of the State when dealing in corporation matters. Under the modern theory, the State owes no duty to persons who may choose to deal with corporations to look after the solvency of such artificial bodies; nor to the stockholders to protect them from the consequences of going into such concerns, the idea being that in the case of ordinary business corporations the State’s duty ends in providing clearly that creditors and stockholders shall be at all times precisely informed of all the facts attending both the organization and the management of such corporations, and particularly that there shall be full publicity given to all details of the original organization thereof.”

It may be of some practical value at this point to inquire briefly what are the advantages of conducting business under corporate management rather than as an individual or a copartnership enterprise. These advantages may be enumerated as follows :

*First*, Immunity from individual liability for debts arising out of the conduct of the business.

## INTRODUCTION.

*Second,* The securing of the element of perpetuity for the life of the enterprise in hand, so that the death of any of the parties interested does not interfere with the conduct of the business.

*Third,* The good-will and prestige of the business is not then the property of an individual, but belongs to the corporation.

*Fourth,* The ease with which capital is obtained for the use of the business through the sale of stock, thus doing away with the danger or necessity of admitting general or special partners into the concern.

*Fifth,* The facility with which money can be obtained by the sale of bonds or preferred stock.

*Sixth,* The ease with which individual interests in a business may be sold or transferred, without the necessity of obtaining the consent of a third party to the sale.

*Seventh,* The removal of the danger of being ruined through the dishonesty or extravagance of a partner.

*Eighth,* The small expense connected with the incorporation of an enterprise.

*Ninth,* The wide and far reaching extension of the powers of a corporation as compared with that of individuals and copartners.

But the advantages of corporate management being stated, the question then arises : Where should the business man of to-day go to procure a charter for the enterprise he may have in hand ? With forty-five States, five Territories, and the District of Columbia all offering facilities for incorporation, the task of selection therefrom is by no means an easy one. Where the capitalization is small or the corporate purposes simple, it is sometimes, though not always, best to procure a charter from the State where the principal prospective incorporators reside or where they propose to carry on the company's business. On the other hand, if the capitalization is to be sought in other localities, the proposed corporate business interstate in character, or the prospective capitalization large, and the corporate purposes sought for broad in character, then it may be of great advantage to procure a charter in some outside State. Under such circumstances recourse is usually had to what are recognized as the leading incorporating States already referred to.

But to go further, it may be stated that a proper investigation into the question as to where to look for a charter best suited to the immediate purposes of the proposed corporation must necessa-



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

rily entail an investigation among many others into the following matters:

1. Nature of the business corporation act of the State wherein it is proposed to incorporate.

2. Policy of such States towards corporations, domestic and foreign.

3. Publicity required as to the condition of corporations organized under the laws of that particular State.

4. Extent of legislative control over private corporations.

5. Nature of corporate powers desired.

6. Initial expense.

7. Amount of annual franchise tax, if any.

8. Amount of capitalization permitted, and the par value of shares allowed.

9. Time within which the capital stock must be paid up.

10. Question as to whether stockholders' and directors' meetings must be held within the State in which the charter is procured.

11. Question as to whether the principal office of the corporation may be maintained outside of the State of its organization.

12. Ascertainment of the question as to whether stock can be legally issued for property or services instead of for cash.

13. Inquiry as to what extent the appraisal of the board of directors of the property or services paid for by the issuance of stock is conclusive upon the creditors of the corporation seeking, in case of insolvency, to enforce an alleged liability for unpaid stock.

14. Power to issue preferred stock.

15. Par value of the corporate shares desired.

16. Power to create debts.

17. Ease or difficulty with which the charter may be amended.

18. Amount of stockholders' liability, if any.

19. Extent of directors' liability, if any.

20. Ease or difficulty with which the corporation may be dissolved.

21. Nature of the laws of the various States with reference to the terms and conditions under which foreign corporations may do business therein.

Each of the foregoing questions has its proper bearing when it comes to deciding where to go for a charter for some particular business enterprise which it is proposed to prosecute under the form of corporate organization.

## INTRODUCTION.

A discussion of each of these matters will be found in Part I. of the present treatise.

Turning now to the character of the business corporation acts passed by the legislatures of the various States and Territories, it will be apparent to all that many of them are "wonderfully and fearfully made."

If one were to attempt to characterize and compare the various incorporation acts of the several States and Territories, it would be found a task of great difficulty, for the reason that it is almost impossible to find a logical basis for classification. Any number of arbitrary classifications might be adopted, but these would be of no value to either the practitioner or the public at large. Whatever attempt may be made here along this line must be based solely upon the most general lines of similarity of the incorporation acts of various States. As a preliminary to this, it has been noted that certain States and Territories are known and recognized as "leading incorporating States." The ones to which reference is made are New Jersey, New York, Delaware, West Virginia, Maine, South Dakota, Connecticut, Massachusetts, Arizona, Nevada, District of Columbia, and Virginia. The great majority of charters taken out annually in this country are procured in the foregoing enumerated States and Territories.

By many the New Jersey act is considered to be a model of what a business corporation act should be. This fact, coupled with the large revenue secured by the State of New Jersey through this medium, has resulted in the passage in other States of statutes modelled more or less closely after the New Jersey act. This fact prompts the first classification that will be attempted here, which will be termed the "New Jersey Class." Within the limits thereof may be properly included not only New Jersey, but New York, Delaware, West Virginia, Alabama, Nevada, North Carolina, New Mexico, and Virginia as well.

Another classification would embrace a large number of Western States and Territories, which to a greater or less extent have modelled their corporation acts along the same general lines as that of California. This class may properly be referred to as the "California Class," and included therein will be found Colorado, North Dakota, South Dakota, Oklahoma, Idaho, Montana, Oregon, Washington, Utah, Wyoming, Texas, and Arizona.

Another group will be known as the "Maine Group," for the reason that the plan has been therein adopted of having the corporation organized before a certificate of incorporation or organization is filed with or issued by the State officials. In this class belong Maine, Massachusetts, Connecticut, Illinois, Missouri, Arkansas, and Indian Territory.

Iowa and Nebraska have acts very closely resembling each other, and may be grouped as the "Iowa Class." In another group, which we shall call the "Pennsylvania Class," are to be found Pennsylvania, South Carolina, Florida, Mississippi, and Kansas. The distinguishing feature of this class is that the incorporation scheme adopted embraces a petition for incorporation by the incorporators addressed to State officials, to be followed by the filing of a certificate of incorporation if the petition is favorably acted upon.

Another group may be known as the "Kentucky Group," in which belong Kentucky, Ohio, New Hampshire, Rhode Island, and Vermont. The resemblance here, it must be admitted, is more fancied than real, and probably does not depend upon any actual intent to copy the first Kentucky act. In the "Michigan Class" are to be found Michigan, Wisconsin, and Minnesota, all of which possess acts resembling each other in certain features. It is impossible to place Georgia, Indiana, Louisiana, Maryland, and Tennessee in any specified class. They all possess inadequate and certainly unique business corporation acts, which are not likely to be copied by any other State in this day and generation.

# PART I.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

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### CHAPTER I.

#### DRAFTING THE CHARTER.

§ 1. **General Remarks on Corporate Charters.**—Incorporation is a form of expression of the sovereign political power of the State in the creation of a juristic person possessing such limited powers as may be granted to it by the legislative branch of our State or national government. The growth of the corporate form of organization affords an example of the rapid evolution from a somewhat circumscribed beginning to proportions that can only be described in this age of industrial trusts and combinations as colossal in character. Even the courts have not infrequently called attention to the modern disposition to incorporate everything.<sup>1</sup>

Much of this is due no doubt to the passage by the various State legislatures of what are commonly known as "business corporation acts." The phrase "business corporation," in this connection, is a broad term, and includes all corporations engaged in business for profit, as distinguished from municipal and eleemosynary corporations.<sup>2</sup> The creation of corporations organized for profit by special act is now forbidden by constitutional provision in all but seven of the States.<sup>3</sup> The existence throughout the country of general incorporation acts has fully reversed the old policy of granting exclusive privileges of any kind to corporations.<sup>4</sup>

<sup>1</sup> See *In re Italian Mut. Ben. Ass'n*, New Hampshire, Rhode Island, South Carolina, and Vermont.  
<sup>4</sup> Pa. Dis. Rep. 357.

<sup>2</sup> *Adams v. Company*, Fed. Cases No. 47.

<sup>3</sup> Connecticut, Florida, Massachusetts, N. E. 798. <sup>4</sup> *People v. Company*, 130 Ill. 268; 2

§ 1 INCORPORATION AND ORGANIZATION OF CORPORATIONS. [PART I.]

The purpose of restricting the power to create corporations by special act has been well set forth as follows: "To inaugurate the policy of placing corporations of the same kind upon a perfect equality as to all future grants and powers by making such laws applicable to all parts of the State and thereby securing the vigilance and attention of its whole representation, and, finally, of making the judicial construction of their powers or the restrictions imposed upon them equally applicable to all corporations of the same class."<sup>1</sup>

It is universally recognized in this country that legislative authority is essential to the creation of a corporation.<sup>2</sup> Incorporators cannot come together and agree to become a corporation without conforming to legislative requirements.<sup>3</sup> It has been well said "that there is an obvious reason for making such organization by written articles of agreement a condition precedent to the exercise of corporate rights. It is the basis upon which all subsequent proceedings are to rest, and is designed to take the place of a charter or act of incorporation by which corporate rights and privileges are usually granted. If there were no such provisions, there would be an absence of any provision by which the right to exercise corporate powers could be definitely fixed and established, and there would be no means of ascertaining the rights of stockholders and of persons dealing with such association."<sup>4</sup>

The charter of a company together with the general laws of the State of its creation, enumerating and limiting the powers of all corporations of that class, constitutes the measure of its powers, and the enumeration thereof implies the exclusion of all other powers except such as are incidentally or necessarily implied.<sup>5</sup>

The instrument by which corporations are created is known by different names in various parts of the country. The term "charter" is a word which has descended to us from the common law existing in England long before the United States became a nation. It originally referred to the specific grant of certain privileges running from the sovereign to a subject. Subsequently it was applied in this country to a specific act of the legislature

<sup>1</sup> *Atkinson v. Company*, 15 O. St. 21; see also *Ex parte Pritz*, 9 Ia. 30.

<sup>2</sup> *McKim v. Odom*, 8 Bland's Chancery (Md.), 407.

<sup>3</sup> *Stowe v. Flagg*, 72 Ill. 397.

<sup>4</sup> *Utley v. Union Tool Co.*, 11 Gray (Mass.), 139.

<sup>5</sup> *G. L. & H. I. Co. v. Kamper*, 73 Ala. 325; *Steiner v. Steiner L. & L. Co.* (Ala.), 26 So. 494; *Salt Co. v. East Saginaw*, 13 Wall. (U. S.) 378.

creating a corporation with distinct and exclusive purposes and powers. With the advent of the passage of general business corporation acts in this country, the word "charter" has been replaced by such terms as "articles of incorporation," "articles of association," "certificate of incorporation," "certificate of organization," and "petition for incorporation." It goes without saying that under the Business Corporation Acts referred to there must be articles of some sort properly executed.<sup>1</sup>

It has been said that the essence of a corporation consists, first, in its capacity to have perpetual succession under a special name and in an artificial form; second, to take and grant property and contract obligations, sue and be sued by its corporate name as an individual; and third, to receive and enjoy corporate privileges and immunities. The first two are the privileges of the incorporators, and the third is the franchise of the corporation.<sup>2</sup>

As far back as 1612 Lord Coke enumerated the essentials of a corporate charter as follows: (1) lawful authority for incorporation; (2) persons to be incorporated; (3) corporate name; (4) domicile; (5) words sufficient in law enumerating the purposes and powers of the corporation. All of these essentials and many more, which by statute are made essentials, are to be found in the business corporation acts of to-day.

Referring now briefly to those matters which are by statute in this country made necessary parts of articles of incorporation, the following may be said: with the exception of Arkansas, Georgia, Indian Territory, Maine, Massachusetts, Mississippi, New Hampshire, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, and Vermont, all have incorporation acts requiring that the duration of corporate existence shall be set forth in the articles of incorporation.

Again, all but New Hampshire and Tennessee require a statement as to the number and par value of shares. More than half the States prescribe that the names of the first or temporary board of directors shall be inserted in the articles, while most of the remaining States require that the number of directors only shall be inserted. Fully half the States authorize the insertion in the articles of provisions for the issuance of preferred stock. A few of the Commonwealths require that the articles

<sup>1</sup> *Abbott v. Company*, 4 Neb. 416;      <sup>2</sup> *Snell v. City of Chicago*, 133 Ill. 413;  
*Lusk v. Riggs* (Neb.), 97 N. W. 1033; 24 N. E. 532.  
*Childs v. Smith*, 55 Barb. (N. Y.) 45.

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shall contain a statement as to the amount of stock subscriptions, the amount of capital stock paid in, and the amount of capital with which the corporation will begin business. Alaska, Arizona, Delaware, Louisiana, Iowa, Minnesota, Nebraska, and Utah require that the date of the annual meeting shall appear in the articles. Alabama, Connecticut, Delaware, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, South Carolina, Utah, Virginia, West Virginia, and Wisconsin expressly authorize the insertion in the articles of provisions for the regulation of the internal affairs of the corporation. If it is desired to protect stockholders from personal liability for corporate debts, there must be inserted in the articles of incorporation of companies organized under the laws of Arizona, Delaware, Iowa, Kentucky, and Utah provision specifically exempting stockholders from such liability.

And so the enumeration might be continued almost indefinitely of special provisions required in particular States in connection with the incorporation of corporate enterprises.

Finally, attention is called to the various steps necessary to create a corporation under the modern business corporation acts, qualified in every respect to carry out the purposes for which it is formed. These steps may be enumerated as follows: (1) the drafting of the articles of incorporation; (2) the signing of the articles by the requisite number of incorporators, and acknowledgment of the same before an officer duly authorized to take such acknowledgments; (3) filing and recording the articles with the proper State and county officials after payment of the requisite organization tax and filing and recording fees; (4) organization of the corporation ready for the transaction of business; (5) securing the necessary permit from State officials (if any is required) to transact business within the domiciliary State.<sup>1</sup>

§ 2. **Incorporators.** — An incorporator is one of the constituents of a corporation, who by petition or by means of the execution of articles of incorporation invokes the exercise of the supreme political power of the State in the creation of a corporation for the benefit of himself and associates and their successors in interest.<sup>2</sup>

The words "corporator" and "incorporator" have essentially

<sup>1</sup> See *Carmody v. Powers*, 60 Mich. 26; 26 N. W. 80.

<sup>2</sup> *In re Lady Bryan Co.*, 1 Saw. 349; *E. & N. Y. C. R. R. Co. v. Owen*, 32 Barb. (N. Y.) 616.

the same meaning. The qualifications of incorporators vary with the State from which the charter is sought. The usual number of incorporators required by the various acts varies from one to five.<sup>1</sup> In Iowa and Nebraska one person may incorporate.<sup>2</sup> Residential requirements on the part of incorporators exist in Alaska, California, Idaho, Kansas, Maryland, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, and Wisconsin.<sup>3</sup> Failure to state residence of incorporators in articles is, however, not fatal to corporate existence.<sup>4</sup>

The general rule is that citizenship is not necessary unless specifically required by the statute of incorporators.<sup>5</sup> It has been said that in the absence of statute providing otherwise incorporators must be stockholders.<sup>6</sup> The rule, however, appears to be otherwise in Oregon, Pennsylvania, South Dakota, Texas, Tennessee, and Georgia.<sup>7</sup> In a majority of the States, however, statutes expressly prescribe that incorporators must be subscribers for at least one share of the capital stock of the proposed corporation.

If married women are under no disabilities, they may act as incorporators.<sup>8</sup> Aliens may be incorporators if statute does not provide otherwise.<sup>9</sup>

Some of the States expressly limit the right to become incorporators to natural persons. However, where no such express limitation exists, there is no question but what the word "person," when used in the statute limiting such matters, would not permit corporations to act as incorporators.<sup>10</sup>

The rule seems to be that incorporators must be of full age.<sup>11</sup> Incorporators must also be known persons.<sup>12</sup> The modern rule

<sup>1</sup> See Part III. Table 4, page 574.

<sup>2</sup> *P. B. Corporation v. Lamson*, 16 Me. 224; *Ulmer v. Company*, 98 Me. 579; 57 Atl. 1001.

<sup>3</sup> See Part III. Table 5, page 575.

<sup>4</sup> *State v. Foulkes*, 94 Ind. 493; see also *Halbert v. Association* (Tex. Civ. App.), 34 S. W. 636.

<sup>5</sup> *M. N. F. Co. v. Baumbach*, 32 Fed. 205; *A. S. Co. v. Heidenheimer*, 80 Tex. 344; 15 S. W. 1038.

<sup>6</sup> *Gulliver v. Roelle*, 100 Ill. 141; *Byronville Creamery Ass'n v. Ivers* (Minn.), 100 N. W. 387; *Chase v. Lord*, 77 N. Y. 11; *Medler v. Company*, 6 N. Mex. 331.

<sup>7</sup> *Coyote, etc. Co. v. Ruble*, 8 Ore. 284; *Densmore Oil Co. v. Densmore*, 64 Pa. St. 43; *Singer Mfg. Co. v. Peck*, 9 S. D. 29;

67 N. W. 947; *Ramsey v. Tod*, 95 Tex. 614; 69 S. W. 133; *Byrnes v. Beck*, 10 Ga. 121; *B. B. & T. Co. v. J. B. T. Co.*, 101 Tenn. 545; 48 S. W. 228; *Wechselberg v. Bank*, 64 Fed. 90.

<sup>8</sup> *In re* application for charter, 27 Weekly Notes of Cases (Pa.), 399; *In re Century Club*, 27 W. N. C. (Pa.) 399.

<sup>9</sup> *Lamar v. Browne*, 92 U. S. 187; 23 Law. Ed. 650.

<sup>10</sup> *C. R. Co. v. P. R. Co.*, 31 N. J. Eq. 475; *Insurance Co. v. N. H. P. Co.*, 37 La. An. 233.

<sup>11</sup> *Matter of Globe, etc. Ass'n*, 135 N. Y. 280; 32 N. E. 122; *H. F. Road Co. v. Townsend*, 13 Ont. Ap. Rep. 534.

<sup>12</sup> *C. R. R. of N. J. v. P. R. R. Co.*, 31 N. J. Eq. 475.



seems to be that incorporators are merely conduits for the purpose of organization for the benefit of future stockholders.<sup>1</sup> Under this rule there can be no valid legal question raised at this day as to the legality of the use of what are commonly known as "dummy incorporators" in the organization of corporations.<sup>2</sup>

§ 3. **Corporate Name.**—Every corporation, like an individual, must have a name under which its business must be carried on. It has been said "that the name goes to the very being of the creation, the knot of the combination, without which corporations could not do their corporate acts, without which it is unable to implead and be impleaded, to take any action until it hath gotten a name."<sup>3</sup> The word "company," which is usually a part of the corporate name, does not necessarily imply a corporation.<sup>4</sup> In Alabama, Colorado, Connecticut, Delaware, Kansas, Kentucky, Missouri, North Carolina, and Virginia statutes exist which provide that the corporate name must end with some such word as "association," "company," "corporation," "club," "society," "syndicate," or "limited."<sup>5</sup>

In a number of the States corporations upon organization are forbidden to take the same name as that of an existing domestic corporation, or one so similar as to be calculated to deceive or cause confusion.<sup>6</sup> Some few of the States go still further and forbid the use of the name of any foreign corporation by newly created domestic corporations, provided the former has secured a permit to do business in the State. The States here referred to are Connecticut, Delaware, Kentucky, Massachusetts, New York, Utah, Virginia, and West Virginia. In the absence of such statute there is ordinarily no restriction on the right to take the corporate name of a foreign corporation.<sup>7</sup>

The corporate name is the property of the corporation, and equity will protect the corporation in any jurisdiction from the

<sup>1</sup> Densmore Oil Co. v. Densmore, 64 Pa. St. 43.

<sup>4</sup> Clarke v. Insurance Co., 7 Mo. App. 77.

<sup>2</sup> Salamon v. Salamon Co. (House of Lords Cases), 45 Weekly Rep. 193; 75 Law Times Rep. 426. But see Louisville Banking Co. v. Eisenman, 94 Ky. 83; 21 S. W. 531, 1049; Tillyer v. Hero Jar Co., 17 Phil. (Pa.) 153.

<sup>5</sup> On use of word "limited" see Sparks v. Company, 3 Idaho, 306; 29 Pac. 134.

<sup>6</sup> See State v. McGrath, 75 Mo. 424.

<sup>7</sup> Smith v. Plank Road, 30 Ala. 650; Hazelton Boiler Co. v. Company, 137 Ill. 231; 28 N. E. 248.

<sup>7</sup> L. V. C. Co. v. Hamblen, 23 Fed. 225; G. I. R. G. M. Co. v. G. R. Co., 128 U. S. 598; 9 S. Ct. 166; People v. H. L. Sus. Co., 111 Mich. 405; 69 N. W. 653.

fraudulent use of another name so like it as to deceive the public and rob it of its business.<sup>1</sup> The mere fact that the corporation against whom a restraining order is asked for has secured a charter in that particular State while the complaining corporation has never been incorporated there or even procured a permit to do business there, will not in most jurisdictions prevent the granting of such relief.<sup>2</sup>

Where statutes exist, such as have been referred to, forbidding the use of similar corporate names, while the attitude of the Secretary of State in such cases with respect to the issuance of a certificate of incorporation is ministerial, yet he has reasonable discretion in the matter and cannot be mandamusd when exercising such discretion.<sup>3</sup> In protecting the use of a corporate name the courts proceed on the theory that such name should be protected in equity on principles analogous to those which prevail in the use of trademarks.<sup>4</sup>

§ 4. **Corporate Purposes.** — By corporate purposes is meant the specific declaration in the articles of incorporation of the nature of the business which the corporation is authorized to carry on. Such statement is a matter which primarily concerns the stockholders, and to a less degree the State under whose authority the corporation is created.

In the granting of corporate privileges it is important to specify the purposes and objects because the courts should have some guide in keeping them within the powers granted and conveyed. Unless they be specified with particularity in the petition or in the granting thereof, they might do as they pleased and the law be powerless to restrain them.<sup>5</sup> The purposes enumerated in the articles of association, read in connection with the general laws under which the charter is procured, is the measure of the powers of the corporation.<sup>6</sup>

<sup>1</sup> *Ind. Mut. Dep. Co. v. Central Mut. Dep. Co.*, 23 Ky. L. R. 2247; 66 S. W. 1032. *Higgins Soap Co.*, 144 N. Y. 462; 39 N. E. 490; *American Clay Mfg. Co. v. American Clay Mfg. Co.*, 198 Pa. St. 189; 47 Atl. 936; *Hazleton Boiler Company v. Hazleton T. Boiler Co.*, 142 Ill. 494; 30 N. E. 339.

<sup>2</sup> *Ind. Mut. Dep. Co. v. Central Mut. Dep. Co.*, 23 Ky. L. R. 2247; 66 S. W. 1032; *P. T. S. D. I. Co. v. P. T. Co.*, 123 Fed. 534.

<sup>3</sup> *State ex rel. v. McGrath*, 92 Mo. 355.

<sup>4</sup> *P. T. S. D. I. Co. v. P. T. Co.*, 123 Fed. 534; *Grand Lodge v. Graham*, 96 Iowa, 592; 65 N. W. 837; *Higgins Co. v.*

<sup>5</sup> *In re John H. Deveau et al.*, 54 Ga. 673.

<sup>6</sup> *G. B. & M. R. Co. v. Union Steamboat Co.*, 107 U. S. 98; 27 L. E. 413; *Salt Co. v. East Saginaw*, 13 Wall. (U. S.) 378.

It must be remembered that articles of association under general acts are the productions of private citizens gotten up in the interest of the parties who propose to become incorporated, and who are stimulated by their zeal for personal advantage rather than for the general good. They are, so far as permitted in accordance with the law, substitutes for legislative action in the place of the will of the people of the State as formerly expressed by acts of the legislature. While it was true at one time that all grants from the State to corporations were strictly construed, this principle has been subject to considerable modification of late years. This is owing to the passage of general incorporation acts which were undoubtedly framed and passed with the intent to liberalize the law in respect to such grants.<sup>1</sup>

"It is fundamental that a corporation can be created and exist only by statutory authority, and if a corporation organizes under a general act and inserts in its articles of incorporation regulations and provisions additional to those required by the creative statute, such additional regulations and privileges are voidable at the will of the State, nor is the corporation permitted to place any restrictions on the manner of exercising its corporate duties other than the statute provides. If the corporation claims the right to exist for a certain purpose, it must show that it was organized under a statute authorizing the creation of a corporation for that particular purpose."<sup>2</sup>

The statutes of the various States differ of course with respect to the character of the purposes for which corporations may be formed. Some of them permit incorporation for any lawful business, without any limitations whatsoever. The phrase "other lawful business," found in so many of the statutes, is, according to the weight of authority, held not to be subject to the *noscitur a sociis* rule, and is used as a "catch-all" for the purpose of including any kind of business for pecuniary profit not otherwise provided for.<sup>3</sup> In setting out the purposes, this must be done with reasonable certainty and definiteness. For example, an application for a charter was refused in Pennsylvania, where it was stated that, in addition to certain enumerated objects, the

<sup>1</sup> Finnegan v. Noerenberg, 52 Minn. 239; 53 N. W. 1150.

<sup>2</sup> Brown v. Corbin, 40 Minn. 508; 42 N. W. 481; Green v. Breard, 35 La. An.

<sup>3</sup> Indiana Bond Co. v. Ogle et al., 22 Ind. Ap. 593; 54 N. E. 407.

875; Dittman v. Company (N. J.), 54 Atl. 570.

corporation was organized for "such other purposes as might be agreed upon in the future."<sup>1</sup>

In many of the States express mention is made of the various specific purposes for which corporations may be created. As a general rule the incorporators are required to set out in their articles of association the specific purpose or purposes for which the proposed corporation is to be organized.<sup>2</sup>

Turning now to the various States, we find the following statutory provisions relative to the purposes for which business corporations may be created. In Alabama for any general business or lawful enterprise. In Arizona for the transaction of any lawful business. In Arkansas for the transaction of any lawful business. In Colorado for any lawful purpose. In California for any purpose for which individuals may associate themselves. In Connecticut for the transaction of any lawful business. In Delaware for the transaction of any lawful business or to promote or conduct any legitimate object or objects. In the District of Columbia any enterprise or business which may be lawfully conducted by an individual, except banking, real estate, and railroads. In Florida for the transaction of any lawful business. In Georgia for any purpose intended for pecuniary profit. In Idaho for any purpose for which individuals may lawfully associate themselves. In Illinois for any lawful purpose. In Indiana for the transaction of any kind of mining, mercantile, chemical, and manufacturing business; also grain elevator, union stock yards, and transit companies. In Iowa for the transaction of any lawful business. In Kansas for the transaction of any kind of manufacturing, mining, chemical, and mercantile business. In Kentucky for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose. In Louisiana for the transaction of any lawful business, except stock jobbing. In Maine for the transaction of any lawful business. In Maryland for the transaction of any kind of mining, manufacturing, chemical, or mercantile business; also for shipbuilding and industrial purposes, and for the transportation of the products of any manufacturing or mining corporation. In Massachusetts for any lawful purpose except to buy or sell real estate or to sell or manufacture intoxicating liquors. In Michigan for the transaction of any lawful

<sup>1</sup> *In re Journalists' Fund*, 8 Phil. 212.

<sup>2</sup> See *Hughes v. Company*, 34 Md. 316.

business, but only a manufacturing and a mercantile business can be carried on by the same corporation. In Minnesota for the transaction of any lawful business. In Mississippi for any lawful purpose. In Missouri for any purpose intended for profit or gain. In Montana for the transaction of any kind of manufacturing, mining, chemical, or mercantile business, or for any lawful commercial or industrial business, or for carrying on any branch of business designed to aid in or protect the interests of the company. In Nebraska for the transaction of any lawful business. In Nevada for any branch of trade or business, commerce, foreign or domestic. In New Hampshire for the transaction of any lawful business. In New Jersey for any lawful purpose or purposes whatever. In New Mexico for mining and manufacturing or other industrial purposes. In New York for any lawful purpose or purposes. In North Carolina for engaging in any lawful business. In North Dakota for any purpose for which individuals may lawfully associate themselves. In Ohio for any purpose for which individuals may lawfully associate themselves, except for carrying on a professional business. In Oklahoma for mining, manufacturing or other industrial purposes. In Oregon for the purpose of engaging in any lawful enterprise, business pursuit, or occupation. In Pennsylvania for the transaction of any lawful business, but not for more than one kind of business. In Rhode Island to carry on any ordinary business. In South Carolina for any purpose or purposes whatsoever or two or more combined. In South Dakota for the transaction of any lawful business. In Tennessee for the trade of the merchants, and for mining, boring, manufacturing, and other specified purposes. In Texas for manufacturing or mining and the purchase of goods, wares, and merchandise; also for buying and selling agricultural products and for other specified purposes. In Utah for any purpose for which individuals may lawfully associate themselves. In Vermont for carrying on any object or business not repugnant to public policy or the laws of the State. In Virginia for any purpose which may be lawfully conducted by individuals or by a body politic and corporate. In Washington for any trade or business. In West Virginia for any purpose or business useful to the public for which a firm or copartnership may be lawfully formed. In Wisconsin for any lawful business or purpose whatever. In Wyoming for the transaction of any kind of manufacturing,

mining, mercantile, and chemical business or any business designed to aid in the industrial or productive interests of the country.

The foregoing enumeration of purposes for which corporations may be created in the various Commonwealths named above, should be qualified by the statement that in most of them special acts are provided for certain classes of corporations, such as banks, trust companies, insurance companies, etc., under which corporations of that character must be incorporated. Among the few States in which corporations may be created for any lawful purpose whatever including the excepted classes above referred to are Alabama, Virginia, and West Virginia.

Finally, attention is called to the fact that in some few of the Commonwealths the statutes require that the certificate set forth the particular trade to be carried on. Such a provision is in legal effect equivalent to requiring that the purpose or object of the proposed corporation be set forth.

**§ 5. Number of Corporate Purposes Permitted.** — Difficulty frequently arises in determining whether under the provisions of some particular business corporation act parties may incorporate for the transaction of more than one line of business. In some of the States, notably, Alabama, Connecticut, Delaware, Maine, Massachusetts, Nevada, New Jersey, New York, North Carolina, Virginia, and West Virginia, the acts are so framed as to clearly authorize incorporation of companies for any number of purposes not covered by special acts. In all the remaining States, with the exception of District of Columbia, Indiana, Kansas, Louisiana, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, Texas, and Wyoming, the matter is greatly simplified by State officials construing the statutes of their respective States to permit the incorporation of companies for the transaction of any number of lines of business not regulated by special statutes.

In Georgia, Indiana, Maryland, Michigan, Pennsylvania, Tennessee, and Texas the different lines of business are divided into classes. Generally speaking, parties are not permitted to incorporate for lines of business included in more than one of these classes.<sup>1</sup> In Wyoming the law requires the certificate of incorporation to have but one general object. In Ohio only one purpose may be inserted. In Kansas and Missouri the number of purposes is only limited by the provision of law that the name of

<sup>1</sup> The rule is otherwise in Indiana and Maryland.

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the corporation shall indicate the nature of the business to be carried on by it.

Some suggestions along the line of determining the question as to the number of purposes which may be inserted in articles of incorporation in any particular States may be here presented, Where the statute permits corporations to be formed for several purposes named in the alternative, separated by the disjunctive conjunction "or," it is held that a corporation cannot be organized thereunder for more than one of such purposes, and that articles of incorporation which include more than one of them are void, and that incorporation under them will be refused.<sup>1</sup>

Again, it would appear that where incorporation for only one purpose is permitted, incorporators must make a choice of such purpose themselves in the first instance, for the courts have quite generally refused to make it for them.<sup>2</sup>

On this general subject the Supreme Court of Texas in a recent case spoke as follows: "A charter must set forth the purpose for which it is formed. This for the reason that if it had been intended that a corporation might be created for two or more of the purposes specified in the statute, it would have been proper to have stated 'purpose or purposes for which it is formed.' The use of the word 'purpose' in the singular number tends to show that it was the intention of the legislature to authorize the creation of a corporation for only one purpose. It may be true that the use of the singular number may not be the conclusion of the question, and that if there were other purposes in the act which either by express declaration or clear implication indicate that it was intended to authorize incorporation for two or more of the designated purposes, whether in the same subdivision or not, we should so hold."<sup>3</sup>

Finally, it may be said that unless the statute expressly or impliedly permits the insertion of more than one purpose in the articles, the insertion of two or more purposes therein will clearly justify State officials in refusing to allow the filing of the same.<sup>4</sup>

<sup>1</sup> *State v. Beck*, 81 Ind. 500; *In re John H. Deveau et al.*, 54 Ga. 673.

<sup>2</sup> *Williams v. Company*, 25 Ind. Ap. 351; 57 N. E. 581; *Bayou Cook Nav. & Fisheries Co. v. Doullut (La.)*, 35 So. 729; *Or. Ry. & Nav. Co. v. Company*, 130 U. S. 1; 9 S. Ct. 409; *State v. Company*, 88 Wis. 512; 60 N. W. 796.

<sup>3</sup> *Ramsey v. Tod*, 95 Texas, 614; 69 S. W. 133.

<sup>4</sup> *Ind. Bond Co. v. Ogle*, 22 Ind. Ap. 593; 54 N. E. 407; *Woodberry v. McClurg*, 78 Miss. 831; 29 So. 514; *Kinston, etc. Co. v. Stroud*, 132 N. C. 413; 43 S. E. 9.

§ 6. **Collateral Attack upon Corporate Purposes and Powers.** — The term “collateral attack,” as used in corporation law, has reference to the attempt of parties other than the State (in direct proceedings) to question the validity of a corporation’s existence and purposes or its right to exercise corporate powers. The law reports are full of conflicting decisions relating to the general subject of collateral attack upon corporate existence, purposes, and powers. The seemingly hopeless confusion which exists among the courts on this subject is largely due to a failure on their part to recognize that the matter has, by a gradual process of statutory and judicial legislation, become at the present time an academic one. It is proposed at this point to discuss at length not only the question of the right to collaterally attack the legality of corporate purposes as set forth in articles of incorporation, but as well to consider in this same connection the right to collaterally attack the validity of corporate existence and the right to exercise corporate powers. This for the reason that all these questions are so closely related to each other as to properly permit of discussion at one and the same time.

At the outset, a word should be said as to the policy that would seem to dictate the establishment of statutory and judicial rules, forbidding the impeachment by indirect methods of a corporation’s right to exist. In the first place, such attacks are rarely made except in an attempt to defeat the ends of justice, by setting up defences to actions brought against debtors by corporations, in which the parties interposing the same have generally no direct interest whatever. If the State legislatures had not by legislation, and the courts by an extended application of the doctrine of estoppel, forbidden such collateral inquiry into these matters, it would have been impossible in a great number of cases for litigants to enforce their just rights in courts of law. If such a right were admitted in one case, it must be in all. Corporations might thus be called upon years after their creation to establish the validity of corporate existence, purposes, and powers, which public policy should hold to be valid as against all parties except the State.<sup>1</sup>

Having already observed that the question of the right to collaterally attack corporate existence, purposes, and powers has become largely an academic one, it will now be proper to sub-

<sup>1</sup> *Duggan v. Company*, 11 Col. 113; 17 Pac. 105.



stantiate this statement. That the discussion of this question may proceed along logical lines, attention is first called to the alleged right to collaterally attack the validity of corporate existence.

In twenty-six of the States and Territories collateral inquiry into the legality of corporate existence is expressly forbidden by statute, the right to impeach such existence being expressly reserved to the State alone by means of direct proceedings brought for that purpose.<sup>1</sup> Thus, in California it is provided that where a corporation claims in good faith to be a corporation and doing business as such, its right to exercise corporate powers shall not be inquired into collaterally in any private suit to which such *de facto* corporation may be a party.

In Delaware the law provides "that no corporation shall be permitted to set up or rely upon the want of legal organization as a defence in any action against it, nor shall any person transacting business with such corporation, or sued for injury to its property be permitted to rely upon such want of legal organization as a defence." In Georgia the law provides that the existence of a corporation claiming a charter, under the color of law, cannot be collaterally attacked, and that all who dealt with the corporation as such are estopped from denying its corporate existence. In Iowa, Kentucky, and Nebraska statutes exist essentially the same as that in force in Delaware as cited above. In Nebraska the law provides that evidence that the corporation is doing business under a certain name shall be *prima facie* proof of its due incorporation or existence pursuant to law.

In Montana collateral inquiry into corporate existence is expressly forbidden, until the fact that there was in fact no such corporation has been adjudged in a direct proceeding brought for that purpose. In South Carolina, it is provided that no irregularity shall be held to vitiate the corporation until a direct proceeding to set aside or annul the charter be commenced by the proper authorities of the State, and all acts and contracts entered into shall have the same force and effect as if no irregularity existed.

In South Dakota, North Dakota, and Oklahoma the law provides that the due incorporation of any company claiming in good faith to be a corporation and doing business as such, its right to exer-

<sup>1</sup> See Part III. Table 3, page 642, see *M. W. R. Co. v. Supervisors*, 64 Cal. 69; also *Boyce v. Church*, 46 Md. 359; *W. & 28 Pac. 496*.

cise corporate powers shall not be inquired into collaterally. In Tennessee the law provides that the validity of corporate existence shall not be collaterally questioned. Persons acting as a corporation, the law says, will be presumed to be legally incorporated until the contrary is shown, and no such franchise shall be declared annulled or forfeited except in a regular proceeding brought for that purpose. In Texas no person who shall have assumed an obligation to an ostensible corporation as such shall resist the enforcement of such obligation on the ground that there was no such corporation until that fact has been adjudged in a direct proceeding for that purpose.

In Arizona persons acting as a corporation under the provisions of the incorporation act in force in that Territory are by law presumed to be legally organized until the contrary is shown, and no franchise can be declared to be annulled or forfeited except in regular proceedings brought for that purpose. The law also provides that no persons acting as a corporation under such act shall be permitted to set up or rely upon the want of legal organization as a defence to any action brought against them as a corporation, nor shall any person who shall be sued under a contract made with such corporation sue for an injury done to its property or for a wrong done to its interest be permitted to rely upon such want of legal organization in his defence.

Finally, in Mississippi it is provided that it shall not be a defence in any action against a corporation that there was a defect or informality in its organization.

Again in twenty-nine of the States authority is given to State officials to issue certificates of due incorporation.<sup>1</sup> Of this number fourteen are not included in the list of States forbidding collateral attacks upon corporate existence. In such States it is safe to say that the issue of such a certificate is in itself a final adjudication against all parties except the State that a corporation has a legal existence to the extent that it cannot be collaterally attacked by third parties. Particularly where it is organized by the voluntary action of the requisite number of incorporators with the approval and consent of an officer of the State possessing authority in the premises, under an enabling statute permitting corporations of that particular description to be organized thereunder.<sup>2</sup>

<sup>1</sup> See Part III. Table 3, page 477

<sup>2</sup> O'Brien v. Cummings, 13 Mo. Ap. 197; Boyce v. Church, 46 Md. 359.

The theory upon which the rule here stated is based seems to be that State officials in issuing a certificate of due incorporation act under a general statute passed by the legislature, and under the terms thereof become agents as it were thereof for that purpose. It therefore follows that the act of such State officials in certifying as to due incorporation, is in effect the act of the legislature which has the supreme power of creating corporations. So it may be safely said that, according to the best current of authority, where the statute gives the State official authority to issue a certificate of due incorporation, such certificate is evidence thereof against all the world except the State.<sup>1</sup>

Again it should be noted that in many of the States the statute itself gives certain probative force to the charter so issued, by providing that the certificate of incorporation, or a certified copy thereof, shall be evidence to a certain designated extent and for certain purposes. Thus in Connecticut, Kansas, Minnesota, North Dakota, and Ohio statutes exist providing that a certified copy of the certificate of incorporation shall be *prima facie* evidence of the legal existence of the corporation. In Colorado, Oklahoma, Oregon, Texas, West Virginia, and Wyoming statutes provide that such certificate shall be evidence of the existence of the company. In California, Colorado, Idaho, Illinois, Louisiana, Montana, Nevada, North Dakota, South Dakota, Oklahoma, Utah, Washington, and Wyoming such a certificate is *prima facie* evidence of the facts therein stated. In New York the certificate of incorporation of any corporation when duly filed is presumptive evidence of its incorporation. In Arkansas a certified copy of the articles is made *prima facie* evidence of the due formation and of the existence and capacity of the corporation. In Colorado it is made evidence

<sup>1</sup> Petty v. Hayden, 115 Iowa, 212; 88 N. W. 339; Cochran v. Arnold, 58 Pa. St. 399; Litchfield Bank v. Church, 29 Conn. 137; Napier v. Poe, 12 Ga. 170; Carolina Iron Co. v. Abernathay, 94 N. C. 545; Casey v. Galli, 94 U. S. 673; 24 L. E. 168, 307; Lake Sup. Nav. Co. v. Morrison, 22 U. C. C. P. 217; Birds Case, 1 Simon (n. s.), 47; 40 Eng. Ch. 47; In re Barneds Bakery Co., L. R. 2 Ch. 674; O'Brien v. Cummings, 13 Mo. Ap. 197; N. P. C. I. Co. v. Company, 16 Utah, 246; 52 Pac. 168; Holman v. State, 105 Ind. 569; 5 N. E. 702; State v. Carr, 5 N. H. 367; Jones v. Dana, 24 Barb. 395; Taylor v. Company, 91 Me. 193; 39 Atl. 560; Finch v. Ullman, 105 Mo. 255; Saunders v. Farmer, 62 N. H. 572; Union Water Co. v. Kean, 52 N. J. Eq. 111; 27 Atl. 1015; U. S. Vinegar Co. v. Schlegel, 143 N. Y. 537; 38 N. E. 729; W. & P. Ry. Co. v. Company, 114 N. C. 690; 19 S. E. 646; Carroll v. Bank, 19 Wash. 639; 54 Pac. 32; Vermont, etc. Ry. Co. v. Company, 34 Vt. 2; Grubb v. Company, 14 Pa. St. 305; W. P. R. Co. v. Young, 12 Md. 476.

of the existence of the corporation. In Connecticut it is evidence of the legal existence of the corporation, and it is there provided that it shall serve all the purposes of a charter for the corporation. In Delaware it is made evidence in any court of law or equity. In Georgia a certified copy of the petition for incorporation and order granting the same is made evidence of such incorporation in any court. In Kentucky the law provides that it may be used as evidence in any action for or against the corporation. In Maryland it may be used as evidence in all legal proceedings. In Michigan it is *prima facie* evidence of the due formation, existence, and capacity of such corporation. In Minnesota it is provided that it shall be evidence in all courts of such incorporation. In New Jersey it is evidence in all courts and places. In North Carolina it is *prima facie* evidence of the organization and incorporation of the company purporting thereby to have been established. In Pennsylvania it is evidence for all purposes. In Rhode Island a certificate must be received in evidence before any court, tribunal, or authority. In Tennessee it is competent evidence in any proceeding. In West Virginia it shall be received as evidence of the existence of the corporation. In Wyoming it is provided that it shall be evidence of the existence of the company.

Again, in Massachusetts and Indiana the law provides that the certificate of record shall be conclusive evidence of the existence of such corporation. In Wisconsin it must be received as conclusive evidence of the existence of the corporation or of the organization thereof in all cases where such facts are collaterally involved.

Again, in Alabama the certificate of the probate judge states specifically that the incorporators are duly organized as a corporation for the purposes expressed in the declaration, having the power, capacity, and authority conferred by law. In Florida the law provides that "letters patent" shall be conclusive evidence of the existence of the corporation in all actions where the question of the existence is only collaterally involved, and *prima facie* evidence in all other actions and proceedings. In Indiana the order of the court declaring the existence of a corporation entered "*ex parte*" is conclusive as to the fact of such existence. In Mississippi the law provides that the powers specified in the charter shall by the approval of the Governor be vested in such corporation, and it shall go into operation at the time and on the terms and conditions specified.

Again, certain statutes exist providing that after certain preliminary steps have been taken as prescribed by statute such incorporators and their successors and assigns shall thereupon become a body politic and corporate for certain specified purposes. These statutes really provide that upon the observance of certain specified preliminary conditions relative to the making and execution of articles of incorporation, the incorporators, their successors and assigns, shall be a body politic and corporate under the name and for the purposes stated in the articles. The foregoing is the statutory provision as it exists to-day in substance in South Dakota, North Dakota, and Oklahoma. In Virginia the law provides that they shall be a body politic and corporate by the name set forth in the said certificate and upon the terms and powers set forth therein, so far as not in conflict with law. In Pennsylvania the law provides that they shall become a corporation upon the purposes and terms named in the charter. In Maryland they are declared to thereby become a body politic and corporate according to the objects, purposes, articles, conditions, and provisions in said instrument contained. In Maine they are declared to be a corporation, with all the rights and powers and subject to all the duties, obligations, and liabilities provided by law.

In Connecticut a copy of the certificate of organization is *prima facie* evidence that the corporation has been duly organized and is duly authorized to exercise all its corporate powers. In Maine the certificate of the Secretary of State that the corporation has been duly organized is evidence of the corporate existence of the corporation. In South Carolina a certificate is issued by the Secretary of State that the corporation is fully authorized to commence business under its charter for the purposes indicated in the written declaration of the incorporators.

It is not claimed that the statutory provisions here referred to operate so as to preclude entirely collateral attack upon corporate existence, purposes, and powers. The most that is claimed for them where they do not make certain instruments conclusive evidence of corporate existence, purposes, and powers, is that they shift the burden of proof and render the likelihood of collateral attack more remote.<sup>1</sup>

<sup>1</sup> As to meaning of conclusive evidence, see *American Order, etc. v. Merritt*, 151 Mass. 558; 24 N. E. 918. As to meaning of *prima facie* evidence, see *Holmes v. Gililand*, 41 Barb. (N. Y.) 569; *Knapp, etc. Co. v. Strand*, 4 Wash. 686; 30 Pac. 1063;

It has now been fairly demonstrated, it is hoped, that in the majority of the Commonwealths collateral inquiry into corporate existence is either prohibited by statute or else is forbidden by implication, by reason of the issuance of certificates of due incorporation, under proper legislative authority, by State officials. In the few remaining States and Territories the courts have either by a process of judicial legislation or by an extended application of the principle of estoppel, practically made it impossible to successfully attack in collateral proceedings the due existence of a corporation. This on grounds of enlightened public policy.<sup>1</sup>

The judicial legislation above referred to covers the cases where it is impossible to apply principles of estoppel either on account of the absence of any conduct on the part of parties litigant showing their recognition of the corporation's existence, or else is inapplicable by reason of such parties having never in any way dealt with the corporation or recognized its corporate existence.<sup>2</sup>

Having now considered at some length the question as to the right to collaterally attack the validity of corporate existence, there naturally follows an inquiry as to the right to attack the validity of corporate purposes and powers when the same are inserted in the articles of incorporation. It would seem to follow, as a logical sequence, that if the rule be once established forbidding collateral attack upon corporate existence, this same rule should operate as well to prevent collateral attack upon corporate purposes and powers. This for the reason that if a corporation exists at all it must necessarily exist with such purposes and powers as are inserted in the articles of incorporation which called the corporation into being.

As has already been observed, a large number of the States have enacted statutes forbidding collateral attack upon corporate existence. For the reasons already stated, it would appear that these statutes would be equally efficacious for the purpose of prohibiting collateral attack upon corporate purposes and powers.

*Eastern Plank Road Co. v. Vaughan*, 14 N. Y. 546; *Bates v. Wilson*, 14 Col. 140; 24 Pac. 99; *Wood v. Company*, 56 Conn. 87; 13 Atl. 137; *Jewell v. Company*, 101 Ill. 57.

<sup>1</sup> See *Casey v. Galli*, 94 U. S. 673; *Dugan v. Company*, 11 Col. 113; 17 Pac. 105; *McClinch v. Sturgis*, 72 Me. 288; *Finch v. Ullman*, 105 Mo. 255; 16 S. W.

863; *Saunders v. Farmer*, 62 N. H. 572; *Hackensack Water Co. v. DeKay*, 36 N. J. Eq. 548; *U. S. Vinegar Co. v. Schlegel*, 143 N. Y. 537; 38 N. E. 729; *W. & P. Ry. Co. v. Company*, 114 N. C. 690; 19 S. E. 646; *Reynolds v. Myers*, 51 Vt. 444; *Carroll v. Bank*, 19 Wash. 639; 54 Pac. 32.

<sup>2</sup> See *Marion Savings Bank v. Dunkin*, 54 Ala. 471.

## § 7 INCORPORATION AND ORGANIZATION OF CORPORATIONS. [PART I.]

Again, as has already been stated, a large number of the incorporation acts provide that the certificate of incorporation shall be issued by certain designated State officials. Where such certificates are issued under express or even implied authority of the State, the rule unquestionably is that the validity of corporate purposes and powers not *per se* illegal, inserted in the articles of incorporation, cannot be attacked except by the State in a direct proceeding brought for that purpose.<sup>1</sup>

If, however, the charter is issued without the express or implied approval of the State officials, — their duty being merely to certify to the fact and to mark them when filed as public documents in their respective offices, — then the insertion of purposes not authorized by the statute, yet not unlawful *per se*, would probably not render the charter valid for all purposes even when filed.<sup>2</sup>

To sum up briefly the propositions herein presented, it may be said that collateral inquiry into the legality of a corporation's existence, purposes, and powers is forbidden in this country, (1) by statutes expressly forbidding such collateral attack; (2) by reason of authority vested in state officials to issue certificates of due incorporation which for the reasons already stated are not open to collateral attack; (3) by reason of statutory provisions giving to certified copies of articles of incorporation certain probative effect; (4) by an extended application of the principle of estoppel forbidding such collateral attacks; (5) by a process of judicial legislation denying on grounds of public policy the right of parties other than the State to attack the legality of corporate existence, purposes, and powers.

§ 7. **Effect of Inserting Illegal Purposes.** — There seems to be a sound basis in law for permitting collateral attack upon purposes that are illegal *per se*. This for the reason that a distinction clearly exists between purposes which are merely unauthorized

<sup>1</sup> State *ex rel.* Walker v. Talbot, 123 Mo. 399; Casey v. Galli, 94 U. S. 673; Fortier v. Bank, 112 U. S. 439; 5 S. Ct. 234; Ind. 60; 56 N. E. 668; T. A. L. Co. v. Niemeyer v. L. R. J. Ry., 43 Ark. 111. Massey (Tenn.), 56 S. W. 35; Allbright v. Association, 102 Pa. St. 411. See also People v. Beach, 19 Hun, 259; N. Orleans, etc. R. R. Co. v. Frank, 39 La. An. 707; 2 So. 310; Holmes v. Gilliland, 41 Barb. N. Y. 569; Eastern Plank Road Co. v. Vaughan, 14 N. Y. 546; C. & P. Co. v. Secretary of State, 128 Mich. 621; 87 N. W. 901; Cochran v. Arnold, 58 Pa. St. 399; Casey v. Galli, 94 U. S. 673; Fortier v. Bank, 112 U. S. 439; 5 S. Ct. 234; Ind. 60; 56 N. E. 668; T. A. L. Co. v. Niemeyer v. L. R. J. Ry., 43 Ark. 111. <sup>2</sup> Williams v. Company, 25 Ind. Ap. 351; 57 N. E. 581; Kinston, etc. Co. v. Stroud, 132 N. C. 413; 43 S. E. 913; Ramsey v. Tod, 95 Tex. 614; 69 S. W. 133; Or. Ry. & Nav. Co. v. Or. Ry. Co., 130 U. S. 1; 9 S. Ct. 409; State v. Company, 88 Wis. 512; 60 N. W. 796; G. L. H. Ins. Co. v. Kamper, 73 Ala. 325.

by the terms of the general incorporation act, and those purposes which are forbidden by express statute,—civil or penal. In the latter case it seems clear that even the approval by a State official of such unlawful purposes as evidenced by the issuance by them of certificates of due incorporation, do not forbid collateral attack thereon in any suit whereby the corporation seeks to benefit by the insertion of such unlawful purposes in its articles.<sup>1</sup>

The rule might be still further extended so as to apply to purposes which may be lawful in a general way, yet which may be deemed unlawful on account of the limitations inserted in the articles upon the means by which such purposes are to be carried out.<sup>2</sup> The same principle would apply where the purposes are clearly contrary to the public policy of the State.<sup>3</sup> But if purposes are lawful on their face, they will, as against all but the State, be presumed to be such.<sup>4</sup> Where some of the purposes are merely unauthorized, while others are valid and proper, the insertion of the unauthorized purposes will not vitiate the incorporation.<sup>5</sup> But where any of the purposes are illegal *per se*, the State officials would be clearly justified in refusing to allow the articles to be filed, though some of them are lawful.<sup>6</sup>

§ 8. **Corporate Powers, Classification of.** — By “corporate powers” is meant the right or authority of a corporation to act along certain lines prescribed for it in the instrument whereby it was created. The tendency of modern decisions is to assimilate the powers of private corporations to those of individuals and copartnerships.<sup>7</sup> It is unnecessary to say that a corporation cannot assume for itself powers of action, irrespective of statute, by the mere declaration thereof in its articles of incorporation.<sup>8</sup> Neither can they be created by by-law.<sup>9</sup>

The Supreme Court of the United States<sup>10</sup> has observed that

<sup>1</sup> *F. N. Bank v. Company*, 59 Ohio St. 316; 52 N. E. 834; *In re Duquesne College*, 2 Pa. Dist. Ct. Rep. 555; *Matter of Agudath Hakehiloth*, 18 N. Y. Mis. Rep. 717; 42 N. Y. Sup. 985; *State v. Company*, 29 Neb. 700; 46 N. W. 155.

<sup>2</sup> *Or. Ry. & Nav. Co. v. Or. Ry. Co.*, 130 U. S. 1; 9 S. Ct. 409.

<sup>3</sup> *Schutzen Bund v. Agitations Verein*, 44 Mich. 313; 6 N. W. 675; *McGrew v. C. P. Ex.*, 85 Tenn. 572; 4 S. W. 38; *In re Benefit Society*, 10 Phil. 19; *People v. Company*, 130 Ill. 268; 22 N. E. 798.

<sup>4</sup> *U. S. Vinegar Co. v. Foehrenbach*, 148 N. Y. 58; 42 N. E. 403.

<sup>5</sup> *Skick v. Company*, 15 Ind. Ap. 310; 44 N. E. 48.

<sup>6</sup> *State v. Company*, 88 Wis. 512; 60 N. W. 796.

<sup>7</sup> *Fink v. Company*, 5 Ore. 301.

<sup>8</sup> *People v. Green*, 116 Mich. 505; 74 N. W. 714.

<sup>9</sup> *Andrews v. Company*, 37 Me. 256.

<sup>10</sup> *Thomas v. Company*, 101 U. S. 71.



"we take the general doctrine to be that the powers of corporations organized under general statutes are such and such only as are conferred by statute. Conceding the rule applicable to all statutes, that what is fairly implied is as much granted as what is expressed, it remains that the charter of the corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others."

The foregoing is true only as to certain classes of powers which are hereinafter referred to as "express powers." The rule is not applicable either to what are known as "common law powers" or to the "incidental powers" of corporations. Corporate powers may properly be divided into three general classes, to wit: (1) Common Law Powers; (2) Express Powers; (3) Incidental Powers. Generally speaking, there is no existing rule or principle by which corporations created for a certain specific object or to carry on a particular trade or business are to be held to be prohibited from all other dealings or transactions not coming within the exact scope of those designated. Undoubtedly the main business of a corporation is to be confined to that class of operations which properly appertains to the general purposes for which this charter was granted. But it may also enter into contracts and engage in transactions which are incidental or auxiliary to the main business, or which may become necessary or profitable in the care and management of the property which it is authorized to hold. The same is true as to certain powers which are held to exist at common law even in the absence of any specific reference to such powers in the articles of incorporation.

**§ 9. Common Law Powers, Definition of; Enumeration of.** — Common law powers are those which the law bestows upon corporations irrespective of statute or charter provisions, as being necessary for the carrying out of the purposes for which it was created.<sup>1</sup> The common law gives to corporations the powers belonging to corporations of their class, unless there is something in the nature of the corporation or in the terms of its charter, or in the act under which it was incorporated inconsistent with the exercise of the powers, or there is some general statute restricting the same.<sup>2</sup>

<sup>1</sup> *Falconer v. Campbell*, 8 Fed. Cases, 593; *Knowles v. Beatty*, 1 McLean, 41; *Leggett v. N. J. M., etc. Co.*, 1 N. J. Eq. 541. 4620; 2 McLean, 195; *C. O. N. G. & F. Co. v. C. D. Co.*, 60 Ohio, 96; 53 N. E. 711; <sup>2</sup> *Smith v. Company*, 27 N. H. 86; *State v. Company*, 144 Mo. 562; 46 S. W. Sutton's Hospital Cases, 5 Coke's Rep. 253.

The common law powers here referred to may be enumerated as follows: (1) the right to the use of a corporate name; (2) the right to perpetual succession; (3) the right to acquire, hold, and dispose of corporate property; (4) the right to appoint corporate officers and agents; (5) the right to establish by-laws for the government of the corporation, its officers and members; (6) the right to sue and be sued.

An examination of the various corporate acts in force in the several States and Territories will serve to show that without exception they contain an enumeration more or less full of the common law powers above referred to. In Indiana the statute refers to them as common law powers, and proceeds to enumerate them.<sup>1</sup>

§ 10. **Right to a Corporate Name.** — The right to the use of a corporate name is a power well recognized both at common law and by statute. Corporations have a property right to the use of such name in the transaction of their business which the courts will always protect.<sup>2</sup> They are recognized in law only by their corporate name.<sup>3</sup>

The name is said "to be the very being of their constitution; the knot of their combination; without which they could not do their corporate acts; for it is unable to implead and be impleaded, to take any action until it hath gotten a name."<sup>4</sup>

The action of State officials in granting the use of a name, it may be observed, is not conclusive, for courts of equity will nevertheless protect corporations in the use of their name.<sup>5</sup> State officials have, however, the power to protect the use of corporate names when applications are made for charters, even when the proposed name is not exactly similar to that of existing corporations.<sup>6</sup>

The right to have a corporate name is in itself a common law power; but it is one which is not alienable.<sup>7</sup>

§ 11. **Right of Perpetual Succession.** — The "right of perpetual succession" under a designated corporate name is one of the common law powers of a corporation. The words "perpetual

<sup>1</sup> Ind. Session Laws, 1901, ch. 127, § 28.

<sup>6</sup> State *ex rel.* v. McGrath, 92 Mo. 355;

<sup>2</sup> L. D. Co. v. Massachusetts, 10 Wall.

5 S. W. 29.

(U. S.) 566; see also *ante*, § 3.

<sup>7</sup> State v. Company, 40 Kan. 96; 19

<sup>3</sup> Curtiss v. Murry, 26 Cal. 633.

Pac. 349; Detroit Citizens' Street Ry. Co.

<sup>4</sup> Smith v. Company, 30 Ala. 650.

v. Common Council, 125 Mich. 673; 85

<sup>5</sup> Grand Lodge, etc. v. Graham, 96

N. W. 96.

Ia. 592; 65 N. W. 837.

succession" do not refer to the duration of the life of the corporation, where this is specifically limited either by statute or by the articles of incorporation, but merely operates to grant the continuation of corporate life during the period so prescribed.<sup>1</sup> Perpetual succession ordinarily merely conveys the right of continued unbroken succession for the period of time limited for the corporate existence.<sup>2</sup>

§ 12. **Right to adopt and use a Corporate Seal.** — It is an inseparable incident to every corporation that it may have a common seal, and make, alter, and renew the same at pleasure.<sup>3</sup> The doctrine of the common law requiring the use of a corporate seal in the execution of corporate contracts is practically obsolete, and the seal is now required, in the absence of express statute, only when it would be required of a natural person under similar circumstances.<sup>4</sup> Ordinarily the exercise of this power is delegated by the stockholders to the directors by means of an appropriate by-law.<sup>5</sup>

§ 13. **Power to acquire, hold, and dispose of Real and Personal Property.** — No doctrine of the common law is more clearly and undeniably established than that which concedes to corporations an inherent right to acquire and hold title to real and personal property, except so far only as they may be restricted by the objects of their creation or the limitations of their charter.<sup>6</sup> The power to acquire such property, when not restricted by statute, is only limited by the rule that it must be such as is reasonably necessary or convenient to enable it to accomplish the purposes for which it was created.<sup>7</sup>

Formerly the amount of real property which a corporation might purchase and hold was very generally limited by statute in most of the Commonwealths. The existence of such statutes may be traced to the policy of the common law and to the existence in England of statutes known as statutes of mortmain, which prohibited corporations from taking and holding real estate without licenses from the king or Parliament.<sup>8</sup> However, in most of the

<sup>1</sup> *State v. Payne*, 129 Mo. 468; 31 S. W. 797.

<sup>2</sup> *Scanlon v. Crawshaw*, 5 Mo. Ap. 337; see, however, *Fairchild v. Association*, 71 Mo. 526.

<sup>3</sup> *Ransom v. Bank*, 13 N. J. Eq. 212; *Thomas v. Dakin*, 22 Wend. 9.

<sup>4</sup> *Green Co. v. Blodgett*, 55 Ill. Ap. 556.

<sup>5</sup> *Woodman v. Company*, 50 Me. 549.

<sup>6</sup> *Lathrop v. Bank*, 8 Dana (Ky.), 114; *Thompson v. Waters*, 25 Mich. 214.

<sup>7</sup> *Brown v. Hogg*, 14 Ill. 219; *Richardson v. Association*, 131 Mass. 174.

<sup>8</sup> *Leazure v. Hillegas*, 7 Ser. & R. (Pa.)

States such restrictions have been done away with, and corporations may now hold such property, both real and personal, as the attainment of their corporate purposes may require. In any event, the general power of a corporation to hold real estate is primarily a question between the corporation and the State, and cannot ordinarily be raised by third parties.<sup>1</sup> Where such statutes exist the corporation has of course no power to exceed the statutory limit as against the State.<sup>2</sup>

The general rule is that corporations, unless forbidden by statute, have implied power to take property by devise.<sup>3</sup> The same rule applies with respect to the power of taking and holding property in trust, provided in so doing it acts within its corporate powers.<sup>4</sup> The power of a corporation to sell and convey is as broad as the power to purchase and hold, and is granted on the same terms.<sup>5</sup>

§ 14. **Power to appoint Corporate Officers and Agents.**—At common law corporations have the inherent power, irrespective of statute or charter provision, to elect directors and executive officers and to appoint such agents as the business of the corporation require.<sup>6</sup>

§ 15. **Power to establish By-laws.**—Every corporation has the implied power to enact such by-laws as may be necessary for the proper government of the corporation, its officers, and stockholders.<sup>7</sup>

Sometimes the statutes prescribe the nature of the by-laws to be adopted and authorize penalties for violation thereof.<sup>8</sup>

313; *White v. Howard*, 38 Conn. 342; *Page v. Heineberg*, 40 Vt. 81; *Rivanna Nav. Co. v. Dawsons*, 3 Grat. (Va.) 19; *Moore v. Moore*, 4 Dana (Ky.), 354; *Mallett v. Simpson*, 94 N. C. 37; *Trustees v. Manning*, 72 Md. 116; 19 Atl. 599; *First M. E. Church v. Dixon*, 178 Ill. 260; 52 N. E. 887.

<sup>1</sup> *C. B. & Q. R. R. Co. v. Lewis*, 53 Ia. 101; 4 N. W. 842.

<sup>2</sup> *Market St. Ry. Co. v. Hellman*, 109 Cal. 571; 42 Pac. 225; *In re McGraw's Estate*, 111 N. Y. 66; *Andrews v. Andrews*, 110 Ill. 223; *Graves v. Niles*, 1 Walker (Mich.), 332.

<sup>3</sup> *White v. Howard*, 38 Conn. 342; *Ravanna Nav. Co. v. Dawsons*, 3 Grat. (Va.) 19.

<sup>4</sup> *Vidal v. Girards Executors*, 2 How. (U. S.) 127; *Morris v. May*, 16 Ohio, 469; *F. L. T. Co. v. H. F. N. Co.*, 41 N. Y. 619; *White v. Rice*, 112 Mich. 403; 70 N. W. 1024; *Greene v. Denuis*, 6 Conn. 304.

<sup>5</sup> *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 543; *People v. College*, 38 Cal. 166.

<sup>6</sup> *Kearney v. Andrews*, 10 N. J. Eq. 70; *A. R. R. Co. v. Kidd*, 29 Ala. 221.

<sup>7</sup> *Wells v. Black*, 117 Cal. 157; 48 Pac. 1090; *People v. Society*, 24 Barb. N. Y. 570; *Martin v. Association*, 2 Coldw. (Tenn.) 418; *Mechanics' Bank v. Smith*, 19 Johns. (N. Y.) 115; *Steger v. Davis*, 8 Tex. Civ. App. 23; 27 S. W. 1068.

<sup>8</sup> *Cahill v. Company*, 2 Doug. (Mich.) 128; *Mobile v. Yuille*, 3 Ala. 137.

## § 17 INCORPORATION AND ORGANIZATION OF CORPORATIONS. [PART I.]

§ 16. **Power to sue and be sued.** — It has been the rule of the courts from time immemorial to recognize and enforce the power of corporations to sue and be sued under and by their corporate name as incident to such corporate existence.<sup>1</sup>

§ 17. **Express Powers, Definition of; Enumeration of.** — Express powers are those which are either granted to all corporations alike by statute, whether inserted in the charter or not, or else are those which are permitted by statute to such corporations as may see fit to take advantage of them, by reserving such powers in the charter itself. Statutes of the character first referred to are construed by the courts to be *ipso facto* read into the charter, thereby becoming part and parcel of it. On the other hand, the last-named powers can only be availed of by the corporation when, as has been stated, they are specifically reserved or set forth in the articles of incorporation. Express powers relate not only to the right to engage in a special line of business as set forth in the statement in the articles of the object or purposes for which the corporation is formed, but they relate as well to other powers which are here termed “express,” inasmuch as they depend upon the existence of specific statutes authorizing their exercise by such corporations as desire to avail themselves thereof. These express powers may be divided into twenty-eight classes, enumerated as follows: (1) power to purchase its own capital stock; (2) power to subscribe for, purchase, and hold stock in other corporations; (3) power to consolidate with other corporations; (4) power to transact all or any part of its business outside of the State of its origin; (5) power to extend its corporate existence; (6) power to change its corporate name; (7) power to increase or decrease its capital stock; (8) power to issue preferred stock; (9) power to change the corporate purposes; (10) power to change the number of directors; (11) power to change its domiciliary office or place for the transaction of its business; (12) power to acquire and enforce a lien upon stock of the corporation to secure the payment of debts due the corporation from stockholders; (13) power to levy assessments against the stockholders with the right to forfeit the stock for non-payment thereof; (14) power to authorize voting at stockholders’ meetings by proxy; (15) power to allow cumulative voting at the election of directors; (16) power to issue stock as full paid and non-

<sup>1</sup> S. W. Co. v. Armstrong, 17 Me. 34.

assessable in exchange for property or services; (17) power to sell the corporate assets; (18) power to voluntarily dissolve the corporation without recourse to the courts; (19) power to insert in the charter provisions for the regulation of the internal affairs of the corporation; (20) power to authorize directors to adopt by-laws; (21) power to authorize appointment of executive committee from board of directors; (22) power to enlarge or diminish corporate powers; (23) power to change par value of shares; (24) power of bondholders to vote at elections of directors; (25) power to classify directors; (26) power to amend articles before organization; (27) power to surrender charter before organization; (28) power given to minority stockholders to compel purchase of their holdings upon consolidation.

Of the foregoing enumerated powers, the following when expressly authorized by statute are applicable to all corporations alike, whether reserved or enumerated in the articles of incorporation, to wit: The power to consolidate with other corporations; to perform constituent acts outside of the State of its origin; to extend its corporate existence; to change its corporate name; to increase or decrease its capital stock; to change the corporate purposes, the number of its directors, its domiciliary office or place for the transaction of its business; to acquire and enforce a lien upon stock of the corporation to secure the payment of debts due the corporation from stockholders; to levy assessments against the stockholders with the right to forfeit stock for non-payment thereof; to authorize voting at stockholders' meetings by proxy; to permit cumulative voting at election of directors (unless such right is merely made permissible by statute); to issue stock as full paid and non-assessable in exchange for property or services; to sell the corporate assets in their entirety; to voluntarily dissolve the corporation without recourse to the courts; to authorize the directors to adopt by-laws (unless such authority is by statute required to be reserved in the articles of incorporation); to appoint an executive committee; to enlarge or diminish the corporate powers; to change the par value of shares; to amend articles before organization; to surrender charter before organization; power given to minority stockholders to compel purchase of their holdings upon consolidation.

Of the remaining express powers it is probably in accord with the general current of authority in this country to say that to be

## § 18 INCORPORATION AND ORGANIZATION OF CORPORATIONS. [PART I.

available to the corporation they must be reserved or specified in the articles of incorporation. The powers to which reference is here made may be enumerated as follows: To subscribe for, purchase, and hold stock in other corporations; to transact all or any part of its business outside of the State of its origin; to issue preferred stock; the power to insert in the charter provisions for the regulation of the internal affairs of the corporation; power of bondholders to vote at election of directors; power to classify directors; and possibly power to purchase its own capital stock.

### § 18. Power of Corporations to purchase their own Stock.—

There is considerable conflict of opinion in this country relative to the question whether a corporation may purchase its own stock without express statutory authority so to do. One line of decisions holds to the view that such power exists only when expressly conferred by statute no matter what the purpose may be.<sup>1</sup> Other courts of equally high standing take the view — and this we believe to be the true one — that every corporation has implied power to purchase its own stock provided it does so in good faith and without prejudice to the rights of creditors.<sup>2</sup> It has been said that, “generally speaking, a corporation, when acting within the scope of the purposes of its organization, has the same power to contract with reference to such powers as an individual. We believe the rule to be well settled in the United States by the overwhelming weight of authority and reason that a private corporation may purchase its own stock if the transaction is fair and in good faith; if it is free from fraud, actual or constructive; if the corporation is not insolvent and in process of dissolution, and if the rights of creditors are in no way affected thereby.”<sup>3</sup>

Where there is no formal corporate action taken, authorizing the purchase of the company's own stock, a purchase made thereof, even though all the stockholders separately consented thereto, would be invalid as against creditors.<sup>4</sup>

<sup>1</sup> *Crandall v. Lincoln*, 52 Conn. 73; *Carrier v. Company*, 56 N. H. 262; *Morgan v. Lewis*, 46 O. St. 1; 17 N. E. 558.

<sup>2</sup> *City Bank Columbus v. Bruce*, 17 N. Y. 507; *N. E. T. Co. v. Abbott*, 162 Mass. 148; 38 N. E. 432; *Clapp v. Petersen*, 104 Ill. 26; *Hall & Farley v. Henderson*, 126 Ala. 449; *Bank v. Company*, 18

Vt. 131; *Chapman v. Company*, 62 N. J. 497; 41 Atl. 690; *Belknap v. Adams*, 49 La. Ann. 1350; 22 Sou. 382; *Ins. Co. v. Swigert*, 135 Ill. 162; 25 N. E. 382; *Porter v. Company (Mont.)*, 74 Pac. 938.

<sup>3</sup> *Porter v. Company (Mont.)*, 74 Pac. 938.

<sup>4</sup> *De La Vergne Refrigerator Machine*

Some of the States expressly authorize corporations to purchase shares of their own capital stock, while others expressly forbid it.<sup>1</sup> The rule of course does not apply to those cases where statutes exist expressly authorizing the forfeiture of stock for non-payment of assessments.<sup>2</sup> The purchase by a corporation of its own stock does not extinguish it.<sup>3</sup> Many of the States have statutes expressly forbidding corporations to vote their own stock when held or owned by them. Even in the absence of such statute, it is probable that the courts would enjoin corporations from voting their own stock.<sup>4</sup> By statute in a number of States corporations are forbidden to purchase their own stock.<sup>5</sup>

**§ 19. Power to subscribe for, purchase, and hold Stock in other Corporations.** — The prevailing rule in this country is that unless the power is expressly given by statute or by reservation of such right in the charter, corporations have no implied power to subscribe for, purchase, or hold stock in other corporations.<sup>6</sup>

An attempt has been made in some States to establish the rule that where the statute does not expressly prohibit such act, the corporation may purchase stock in other corporations without any express authority so to do, provided the circumstances are such as to render the transaction a necessary and proper means for accomplishing the objects of its creation.<sup>7</sup>

If, however, there is no statutory prohibition in the matter and the State officials permit the insertion in the articles of the power to purchase and hold stock in other corporations, the exercise of such power is unquestionably valid.<sup>8</sup> In the same connection it may be observed that a corporation cannot organize subsidiary companies unless such power is given in express terms in the charter or by necessary implication from the powers thereby conferred.<sup>9</sup>

Co. v. German Savings Institution, 175 U. S. 38; 44 L. E. 65.

<sup>1</sup> See Part III. Table 15, page 585; also Tolman v. Company (Dak.), 22 N. W. 505.

<sup>2</sup> Taylor v. Company, 6 Ohio, 83; State v. Association, 35 O. St. 258.

<sup>3</sup> Bank v. Wickersham, 34 Cal. 444; Clapp v. Peterson, 104 Ill. 26.

<sup>4</sup> See McNeely v. Woodruff, 13 N. J. Law, 352; Brewster v. Hartley, 37 Cal. 15.

<sup>5</sup> See Tolman v. Company (Dak.), 22 N. W. 505.

<sup>6</sup> Franklin Bank v. Commercial Bank, 36 O. St. 258; Central Ry. Co. v. Collins,

40 Ga. 582; First Nat. Bank v. Nat. Exchange Bank, 92 U. S. 122; Knowles v. Sandercock, 107 Cal. 629; 40 Pac. 1047.

<sup>7</sup> Hill v. Nisbet, 100 Ind. 341; Peshtigo Co. v. Company, 50 Ill. App. 624; S. P. T. Co. v. Company, 50 Minn. 93; 52 N. W. 274; Steamship Co. v. Company, 28 La. An. 173.

<sup>8</sup> N. S. Co. v. Horton (Neb.), 93 N. W. 225; De La Vergne Refrigerating Machine Co. v. German Savings Institution, 175 U. S. 38; 20 S. Ct. 20.

<sup>9</sup> Lagrone v. Timmerman, 46 S. C. 372; 24 S. E. 290.



In Alaska, District of Columbia, and Georgia corporations are forbidden by statute to hold stock in other corporations.

§ 20. **Power to consolidate with other Corporations.** — Corporations cannot consolidate as against dissenting stockholders, however desirable or beneficial the consolidation may be, unless legislative authority is granted to that end.<sup>1</sup> In the exercise of the police power of the State it may lawfully prohibit the consolidation of corporations.<sup>2</sup>

Consolidation of corporations to a greater or less extent is permitted by statute at the present time in the States of Alabama, California, Connecticut, Delaware, Illinois, Kentucky, Maine, Montana, Nevada, New Jersey, New York, North Carolina, Virginia, and West Virginia. An attempt has been made to lay down the rule that in order to effect a lawful consolidation as between two corporations, the power to so consolidate must be conferred by each of the States under whose laws they were created.<sup>3</sup> A better rule, however, and the only practicable one seems to be this: That either statutory power to dispose of all the assets of the corporation, or in the absence thereof, the consent of all the stockholders must be obtained to the sale of the assets of one corporation to another. Consolidation in this way then takes the form of a selling out and of accepting money or shares in the new corporation in return for the assets of the old.<sup>4</sup>

§ 21. **Power to transact all or any Part of the Corporate Business outside of the State of its Domicile.** — If there are no statutory restrictions, a corporation has implied power to carry on its business at any place within the State in which its charter is procured.<sup>5</sup> The statutory requirement requiring the corporation to fix in the articles its principal place of business does not prohibit under ordinary circumstances the transaction of other business within the State.<sup>6</sup>

Long ago in *Bank of Augusta v. Earle*<sup>7</sup> Chief Justice Taney,

<sup>1</sup> *Pearce v. Ry. Co.*, 91 How. 341; *Hill v. Nisbet*, 100 Ind. 341; *People v. Company*, 121 N. Y. 582; 24 N. E. 834; *L. & N. Ry. Co. v. Kentucky*, 161 U. S. 677.

<sup>2</sup> *L. & N. Ry. Co. v. Kentucky*, 161 U. S. 677.

<sup>3</sup> *Id.*

<sup>4</sup> *Matter of Prospect Park, etc. Ry. Co.*, 67 N. Y. 371; *Toledo, etc. Ry. Co. v. Company*, 95 Fed. 497; 36 C. C. A. 155; *Lauman v. Company*, 30 Pa. St. 42;

*Racine, etc. Ry. Co. v. Company*, 49 Ill. 331.

<sup>5</sup> *Ashley Wire Co. v. Company*, 60 Ill. App. 179; *City Bank v. Beech*, 1 Blatchford, 425; *Stickle v. Company (N. J. Eq.)*, 32 Atl. 708; *Underwood v. Waldron*, 12 Mich. 73; *Berthin v. Company*, 28 La. An. 210; *Lane v. Bank*, 9 Heisk. (Tenn.) 419.

<sup>6</sup> *Potter v. Bank*, 5 Hill (N. Y.), 490.

<sup>7</sup> 13 Peters, 519.

commenting upon the right of a corporation to transact business beyond the limits of the domiciliary State, spoke as follows :

“It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation and cannot migrate to another sovereignty. But although it must live and have its being in that state only, yet it does not by any means follow that its existence there will not be recognized in other places; and its residence in one state creates no insuperable objection to its power of contracting in another. It is indeed a mere artificial being, invisible and intangible; yet it is a person for certain purposes in contemplation of law. . . . Natural persons through the intervention of agents are continually making contracts in countries in which they do not reside; and where they are not personally present when the contract is made; and nobody has ever doubted the validity of these agreements. And what greater objection can there be to the capacity of an artificial person, by its agents, to make a contract within the scope of its limited powers, in a sovereignty in which it does not reside; provided such contracts are permitted to be made by them by the laws of the place.”<sup>1</sup>

The strictly legal existence of a corporation is confined to the State which created it, and it can exercise its powers in another State only by permission, express or implied, of the legislative power thereof; but the mere right to purchase and sell property will be recognized and protected in any State subject only to the limitations that the exercise of such right shall not be contrary to the laws or settled policy of the latter State or prejudicial to its interests or those of its citizens. Unless the Constitution or statutes declare a contrary rule, the courts of another State are bound to recognize the right of a foreign corporation to collect debts due to it, by receiving a conveyance of land.<sup>2</sup>

In order, however, to avoid complications that might possibly arise through hostile action on the part of stockholders or of foreign States, statutes have been enacted in a number of the Common-

<sup>1</sup> See *Hall v. Company*, 91 Ala. 363; 8 So. 348.

<sup>2</sup> *Thompson v. Waters*, 25 Mich. 214.

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wealths expressly authorizing the transaction of business in foreign states and jurisdictions.<sup>1</sup>

Under the progressive incorporation acts in force in many of the States at the present time it is unquestionably permissible to organize corporations in one State for the exclusive purpose of transacting their entire business in other States and Territories.<sup>2</sup>

§ 22. **Power to perform Constituent Acts outside of the Domiciliary State.**— By constituent acts is meant such corporate transactions as are separate and apart from its ordinary business dealings with third parties; such, for example, as the organization of the corporation in the first instance, the adoption of by-laws, the issuance of stock certificates, the election of directors and officers, and the holding of stockholders' meetings.<sup>3</sup> As a general rule such constituent acts cannot be performed without the domiciliary State.<sup>4</sup>

The legislature may, of course, authorize the performance of constituent acts beyond the limits of the State. This has been done in a number of the Commonwealths.<sup>5</sup> It is probably safe to say that aside from organization meetings the presence of stockholders of the corporation at a meeting held without the State will estop them from attacking the validity of the proceedings had at such meeting.<sup>6</sup>

§ 23. **Power to extend Corporate Existence.**— In twenty-seven

<sup>1</sup> See Part III. Table 12, page 582. See *Ashley Wire Co. v. Company*, 60 Ill. App. 179; *Kennebec Co. v. Company*, 72 Mass. 204; *Aspinwall v. Company*, 20 Ind. 492; *Blodgett v. L. Z. Company*, 120 Fed. 893.

<sup>2</sup> *Sec. Nat. Bank v. Hall*, 35 O. St. 158; *M. L. & S. Co. v. Reinhard*, 114 Mo. 218; 21 S. W. 488; *O. M. Co. v. Garst*, 18 R. I. 484; 28 Atl. 973; *People v. Company*, 153 Ill. 25; 38 N. E. 752; *Tilley v. Coykendall*, 172 N. Y. 87; 65 N. E. 574; *Minn., etc. Co. v. Denslow*, 46 Minn. 171; 48 N. W. 771; *Wright v. Lee*, 2 S. D. 596; 51 N. W. 706; *A., etc. R. R. Co. v. Fletcher*, 35 Kan. 236; 10 Pac. 596; *North, etc. Stock Co. v. People*, 147 Ill. 234; 35 N. E. 609; *Canada S. Ry. Co. v. Gehard*, 109 U. S. 527; 3 S. Ct. 363; *Cowell v. Springs Co.*, 100 U. S. 55; *Hastings v. Anacortes, etc. Co.*, 29 Wash. 224; 69 Pac. 776; *Irvine Co. v. Bond*, 74 Fed. 849.

<sup>3</sup> See *McCall v. Company*, 6 Conn.

428; *Galveston, etc. Ry. Co. v. Cowdrey*, 11 Wall. 459; 20 Law. Ed. 199.

<sup>4</sup> *Commonwealth v. Smith*, 45 Pa. St. 59; *Smith v. Company*, 64 Md. 85; 20 Atl. 1032; *Tuckasegee Mining Co. v. Goodhue*, 118 N. C. 981; 24 S. E. 797; *Camp v. Byrne*, 41 Mo. 525; *F. T. L. Co. v. Laigle*, 59 Tex. 339; *Craig Co. v. Smith*, 163 Mass. 262; 39 N. E. 1116; *Bellows v. Todd*, 39 Iowa, 209; *Hodgson v. Company*, 46 Minn. 454; 49 N. W. 197; *Harding v. Company*, 182 Ill. 551; 55 N. E. 577; *Jones v. Company*, 20 Col. 417; 38 Pac. 700; *Mack v. Company*, 90 Ala. 396; 8 So. 150; *Aspinwall v. Company*, 20 Ind. 492; *Court-right v. Deeds*, 37 Iowa, 503.

<sup>5</sup> See Part III. Table 11, page 581.

<sup>6</sup> *Handley v. Stutz*, 139 U. S. 417; *Galveston, etc. Ry. Co. v. Cowdrey*, 11 Wall. 459; see also *Humphreys v. Mooney*, 5 Col. 282.

of the Commonwealths perpetual existence is permitted in the incorporation of companies therein. The power to extend such existence is not of any material importance in these Commonwealths. Twenty-five of the incorporation acts specifically provide for the extension of corporate existence. Without such statutory authority corporate existence cannot be extended.<sup>1</sup>

In some of the States extension of corporate existence must be accompanied by the payment of an organization tax, as is the case of new corporations. Thus, in New Jersey, where such a provision exists, it has been held that such tax must be paid even though the extension of the corporate existence was obtained in the guise of an amendment to the charter.<sup>2</sup>

§ 24. **Power to change the Corporate Name.** — Without statutory authority so to do corporations cannot change their name.<sup>3</sup> If the proposed change of name conflicts with the name of an existing domestic corporation, State officials are justified in refusing to allow the certificate showing the adoption of the new name to be filed.<sup>4</sup>

Some of the States, as, for example, New York and California, only permit change of name by application to the courts.

§ 25. **Power to increase or decrease Capital Stock.** — A corporation has no implied power to either increase or decrease the capital stock.<sup>5</sup> Such power must be conferred in express terms by the incorporation act under which the corporation is organized.<sup>6</sup>

Power to increase or decrease capital stock vests in the stockholders and not in the directors.<sup>7</sup> Frequently incorporation acts provide that the stock shall not be diminished to less than the amount of the corporate debts. Such is the case in California and other States. Certificates of stock issued on a fictitious increase of stock are void.<sup>8</sup>

§ 26. **Power to issue Preferred Stock.** — Stockholders enjoying

<sup>1</sup> See Part III. Table 8, page 578; also *post*, sec. 120.

<sup>2</sup> *National Lead Co. v. Dickinson* (N. J.), 57 Atl. 138.

<sup>3</sup> *Sykes v. People*, 132 Ill. 32; 23 N. E. 391; *C. D. & M. Ry. Co. v. Keisel*, 43 Ia. 39; *Glass Co. v. Company*, 32 Ind. 376.

<sup>4</sup> *In re U. S. M. Rep. Agency*, 115 N. Y. 176; 21 N. E. 1034; *People v. Company*, 111 Mich. 405; 69 N. W. 653.

<sup>5</sup> *Ins. Co. v. Kamper*, 73 Ala. 325; *Pullman v. Upton*, 96 U. S. 328.

<sup>6</sup> *Sutherland v. Olcott*, 95 N. Y. 93; *Crandall v. Lincoln*, 52 Conn. 73; *G. L. & H. Insurance Co. v. Kamper*, 73 Ala. 325; *Palmer v. Bank*, 72 Minn. 266; 75 N. W. 380; *Detroit Chamber of Commerce v. State Secretary*, 109 Mich. 691; 67 N. W. 897.

<sup>7</sup> *C. C. Ry. Co. v. Allerton*, 18 Wall. 233.

<sup>8</sup> *Beitman v. Steiner*, 98 Ala. 241; 13 Sou. 87.

preferential or additional rights not enjoyed by the holders of common shares are called "preferred stockholders." The issuance of preferred stock is a mode by which a corporation obtains funds for its enterprise, without borrowing money or contracting a debt.<sup>1</sup> The question as to whether or not preferred stock may be issued by corporations without express authority by law is a somewhat difficult one to settle. In twenty-five of the States<sup>2</sup> the question is settled by the existence of statutes expressly authorizing the issuance of preferred stock, and even in those States where no such statutes exist it is, with some few exceptions, the custom of the State officials to permit the insertion in the articles of incorporation of provisions authorizing the issuance of preferred stock. The action of such officials is certainly conclusive as against all the world except the State.<sup>3</sup>

The true rule governing the matter now before us is, in the opinion of the writer, best set forth in the case of *Campbell v. American Zylonite Company*.<sup>4</sup> In this case the articles of incorporation divided the capital stock of the corporation into shares, equal in amount and value. Some time after incorporation one of the stockholders executed a blank assignment of certain stock owned by him to a third party as security for a loan. Subsequently all the stockholders, except the owner of this pledged certificate, at a meeting duly called for that purpose, voted to surrender to the corporation, without consideration, forty per cent of their stock, and authorized the corporation to reissue this forty per cent in the form of preferred shares. The legality of this act was contested by the holder of the pledged certificate, and in passing upon the legal question involved, the court spoke as follows:

"The right of every shareholder to his proportion of the profits of the corporation was vested, and in the absence of some power to change the relative value of the shares conferred by statute or by the articles of incorporation, no change could be made without the consent of all the shareholders. . . . The assignee of shares having possession of the certificates, although holding under unregistered transfers, are not bound by contracts between the registered shareholders, the corporation and all the other shareholders which are not within the express or implied powers of corporations or of their shareholders. As between the assignor and the assignee, the unregistered

<sup>1</sup> *Chaffee v. Company*, 55 Vt. 110.

<sup>2</sup> See Part III. Table 8, page 578.

<sup>3</sup> See *Hamlin v. R. R. Co.*, 78 Fed. 670.

<sup>4</sup> 122 N. Y. 455; 25 N. E. 853.

assignment was not void. It follows that the change in the relative value of the shares which this corporation and its registered shareholders sought to effect was not within the express or implied powers conferred upon the corporation or shareholders, and that their action is not binding upon the holder of the assigned certificate who did not consent to the issuance of the preferred shares."

In *Kent v. Quicksilver Company*<sup>1</sup> the court addressing itself to the question now before us, spoke as follows :

"There arises the query whether there was power in the corporation to distinguish between the stockholders in it to form them into two classes, and to give to one class rights in the corporate property and business and earnings from which the other was shut out. We are not prepared to say that at the first the corporation might not have lawfully divided the interest in its capital stock into shares arranged in classes, preferring one class to another in the right which they should have in the profits of the business. The charter gave power to make such by-laws as it might deem proper consistent with Constitution and law. We know of nothing in the Constitution or the law that inhibits a corporation from beginning its corporate action by classifying the shares of its capital stock, with peculiar privileges to one share over another, and thus offering its stock to the public for subscriptions thereto. No rights are got until a subscription is made. Each subscriber would know for what class of stock he put down his name, and what right he got when he thus became a stockholder. There need be no deception or mistake, there would be no treading upon rights previously acquired; no contract, express or implied, would be broken or impaired. Shares of stock are in the nature of choses in action, and give the holder a fixed right in the division of profits or earnings of the company so long as it exists, and of its effects when it is dissolved. That right is as inviolable as is any right in property, and can no more be taken away or lessened against the will of the owner than can any other right, unless power is reserved in the first instance, when it enters into the constitution of the right; or is properly derived afterward from a superior law giver. It is manifest that any action of a corporation which takes hold of the shares of its capital stock already sold and in the hands of lawful owners, and divides them into two classes, — one of which is thereby given prior right to a receipt of a fixed sum from the earnings before the other may have any receipt therefrom, and is given an equal share afterward with the other in what earnings may remain, — destroys the equality of the shares, takes away a right

<sup>1</sup> 78 N. Y. 167.

which originally existed in it, and materially varies the effect of the certificate of stock. It is said that when a corporation can lawfully buy property or get money on loan, any known assurance may be exacted and given which does not fall within the prohibition, express or implied, of some statute. But the prohibition to such action as this is found not, indeed, in a statute commonly so called, but in the constitutional provision which forbids the impairment of vested rights, save for public purposes and on due compensation. The right which a stockholder gets on the purchase of his share, and the issue to him of the certificate therefor, is such a vested right. It is contended that the power so to do is an incidental and implied power necessary to the use of the other powers of the corporation, and is a legitimate means of raising money before securing the agreed consideration therefor. We have already conceded that it is legitimate to borrow money and to secure the repayment of it with a compensation for the use of it. But that is when it is done in such way as to put the burden upon every share of stock alike, and to enable every share of stock to be relieved therefrom alike; in such way as to preserve the equality of right and privilege and value of the shares, and maintain intact the contract thereto with the stockholders.

“We are, therefore, of the opinion that there was no power in the corporate body, nor in a majority of the stockholders, to provide by by-law for the creation of a preferred stock, so as to bind a minority of the stockholders not assenting thereto.”

In what has been stated a most important principle has been referred to, which, it is believed, is controlling upon the question at hand. This principle to which reference is here made is that the charter proceeds from the State, and that nothing can be legally done by the corporation acting through its stockholders not authorized either by statute or by the charter itself. Thus it is clear that in these States where the statutory right to issue preferred stock is not granted and the charter itself only provides for common stock, no preferred stock can be legally issued by the stockholders as against the State, except by amending the charter itself. This, too, even where the stockholders consent.<sup>1</sup>

This question is likely to be presented in a troublesome form where common stock has been pledged to creditors before the preferred stock was issued.<sup>2</sup>

From a careful examination of the authorities it may be said

<sup>1</sup> Knoxville, etc. Co. v. City of Knox-ville, 98 Tenn. 1; 37 S. W. 883.

<sup>2</sup> See generally Lockhart v. Van Alstyne, 31 Mich. 76; McGregor v. Insurance

that in order to constitute an issue of preferred stock valid as against all the world, there must be a statute authorizing it, or provision therefor inserted in the charter. To make the issue valid as against all but the State, the consent of all of the holders of common stock to the issuance of preferred stock is, doubtless, all that is necessary.<sup>1</sup> It is hardly necessary to add, in addition to the foregoing, that the total amount of common stock added to the preferred stock so issued must not in any case exceed the total authorized capital stock of the corporation.

The rights of holders of preferred stock depend upon the terms of the statute or of the charter or by-law authorizing it.<sup>2</sup> Ordinarily the power to authorize the issuance of preferred stock vests in the stockholders and not in the directors.<sup>3</sup>

Where a portion of the stock of the corporation is issued as preferred, no creditor of the corporation can object, provided the money paid for the stock reaches the treasury of the corporation, and the dividends on the stock are not to be paid except out of net profits.<sup>4</sup> Unless the statute provides otherwise, preferred stockholders may be deprived of the right which they would otherwise have, to vote their stock in the same manner as common stockholders.<sup>5</sup> This is commonly done either by charter provision or by a by-law adopted before any preferred stock is issued.

Preferred stock cannot be lawfully issued with the provision that it shall bear interest absolutely.<sup>6</sup> In order to make preferred stock a lien upon the corporate assets statutory authority is necessary.<sup>7</sup>

Co., 33 N. J. Eq. 181; *Higgins v. Lansingh*, 154 Ill. 301; 40 N. E. 362; *Covington, etc. Co. v. Sargent*, 1 Cinn. Sup. Ct. 354; *Elevator Co. v. Memphis, etc. Co.*, 85 Tenn. 703; 5 S. W. 52; *March v. Eastern R. R. Co.*, 43 N. H. 515; *Bates v. Androscoggin, etc. R. R. Co.*, 49 Me. 491; *Pronty v. Mich., etc. R. R. Co.*, 1 Hun, 655; *Kent v. Quicksilver Min. Co.*, 12 Hun, 53; *Jones v. Terre Haute, etc. Co.*, 57 N. Y. 196; *Hoyt v. Quicksilver Mining Co.*, 78 N. Y. 159; s. c. 9 Week. Digest, 187, aff'g 17 Hun, 169; *Curry v. Scott*, 54 Pa. St. 270; *Sturges v. E. Un. Ry. Co.*, 7 De Gex, M. & G. 158; *Matthews v. Gt. Northern R. R. Co.*, 28 L. J. Ch. 375; *Green's Brice Ultra Vires*, 145; *Hutton v. Scarborough Hotel Co.*, 2 Drew & Sim. 514; *Hook v. Gt. Western Ry. Co.*, 3 L. R. Ch. 262; *Henry v. Gt. Northern*

*Ry. Co.*, 4 K. & J. 1; 27 L. J. Ch. 1; *Corry v. Londonderry, etc. Co.*, 29 Beav. 272; 3 L. J. Ch. 290; *Coates v. Nottingham Water Works Co.*, 30 Beav. 86.

<sup>1</sup> *Higgins v. Lansingh*, 154 Ill. 301; 40 N. E. 362.

<sup>2</sup> *Scott v. B. & O. R. R. Co.*, 93 Md. 75; 49 Atl. 327.

<sup>3</sup> See *Coit v. Freed*, 15 Utah, 426; 49 Pac. 533.

<sup>4</sup> *First Nat. Bank of Peoria v. Peoria Watch Co.*, 191 Ill. 128; 60 N. E. 859.

<sup>5</sup> *Lockhart v. Van Alstyne*, 31 Mich. 76; *Mackintosh v. Company*, 32 Fed. 350; *Miller v. Ratterman*, 47 O. St. 141.

<sup>6</sup> *Winscott v. Investment Co.*, 63 Mo. Ap. 367.

<sup>7</sup> *Continental Trust Co. v. Toledo, etc. Ry. Co.*, 72 Fed. 92.



§ 27. **Power to change the Corporate Purposes.**—In the early days the right of amendment, when the same related to altering the original purposes of corporations, was jealously guarded and limited both by statute and by judicial construction. In later years there has been evinced greater liberality in this regard, as evidenced by granting to corporations unlimited power of amendment.<sup>1</sup> The only real difficulty in this connection arises when an attempt is made to so completely change the original purposes for which a corporation was formed as in effect to create a new corporation. Under the Pennsylvania Incorporation Act governing amendments, it was held that this could not be done.<sup>2</sup>

The present attitude of the courts on this subject is well shown by a recent New Jersey decision, — that of *Meredith v. New Jersey Zinc & Iron Company*.<sup>3</sup> In this case the right of amendment, even when producing fundamental changes in the corporate purposes, was sustained.<sup>4</sup>

It appears clear that under the liberal power of amendment existing to-day in the majority of the States, any changes may be made, no matter how fundamental, by the consent of all the stockholders. And where the matter is simply one between the corporation and the State, the right to make such an amendment cannot, in the States referred to, be questioned when adopted by the requisite number of stockholders.

§ 28. **Power to change Number of Directors.**—Only in those States where the number of directors is required to be fixed in the articles, is it necessary to have statutory authority to change the same. In other States the matter of amendment may be regulated by the by-laws. However, in the larger number of the Commonwealths, the power to amend the articles with reference to changing the number of directors is required to be based upon express statutory authority so to do.<sup>5</sup>

<sup>1</sup> See Part III., Table 8, page 578.

<sup>2</sup> *In re Pennsylvania Bottling Co.*, 19 Pennsylvania County Court Reports, 593. See also *State v. Taylor*, 53 Iowa, 759; 6 N. W. 39.

<sup>3</sup> *Meredith v. Company*, 59 N. J. Eq. 257; 44 Atl. 55. See also sec. 112, *post*.

<sup>4</sup> See also *Grand River College v. Robertson*, 67 Mo. App. 329; *Mercantile State-ment Co. v. Kneal*, 51 Minn. 263; 53 N. W. 632; *Bowie v. Grand Lodge*, 99 Cal. 392; 34 Pac. 103; *Day v. Company*, 75 Ia.

694; 38 N. W. 113; *Stickle v. Liberty Cycle Mfg. Co.* (N. J. Eq.), 32 Atl. 708; *Banet v. Company*, 13 Ill. 504; *Ross v. Company*, 77 Ill. 134; *Pac. Ry. Co. v. Renshaw*, 18 Mo. 210; *Ashton v. Burbank*, 2 Dill. (U. S.) 435; *Del. Ry. Co. v. Thorp*, 1 Hurst (Del.), 149; *M. B. Ry. Co. v. Sullivan*, 37 Ga. 240; *Com. v. Cullen*, 13 Pa. St. 133.

<sup>5</sup> See Part III. Table 16, page 586; also see *Matter of Griffing Iron Co.*, 63 N. J. Law, 168; 41 Atl. 931; 63 N. J. Law, 357; 46 Atl. 1097.

§ 29. **The Power to change the Corporate Domicile and Principal Place of Business.** — As will hereafter be seen, it is essential to corporate existence that the corporation should have a home.<sup>1</sup> It is the naming of the domiciliary office in the articles which fixes the residence of the corporation for jurisdictional purposes, and fixes the usual place for holding stockholders' and directors' meetings. If it is desired to change the domicile, or if the location of the corporation's principal place of business is to be transferred from one place to another, an amendment to the articles must be had under legislative sanction.<sup>2</sup> It should, however, be noted in this connection, that the corporation's domicile and its principal place of business are not necessarily one and the same thing.<sup>3</sup>

Again, if, as is the case in some States, the name of the agent upon whom process upon the corporation may be served, is required to be set forth in the articles, in order to lawfully substitute a new agent, an amendment to the articles is necessary, made pursuant to statutory authority given in the premises.<sup>4</sup>

§ 30. **Power to acquire and enforce a Lien upon Stock to secure the Payment of Debts Due the Corporation.** — In a large number of the States statutes exist expressly granting to corporations the right to enforce a lien upon the stock of its members for the purpose of securing the payment of debts due from such members to the corporation.<sup>5</sup>

The courts are not by any means in entire agreement as to whether statutory authority to enforce such a lien is essential to its validity. Some courts, of excellent repute, maintain the affirmative, and others take the opposite view.<sup>6</sup> It seems fairly certain that at common law such a right did not exist.<sup>7</sup>

The true view appears to be that while at common law a corporation had no lien on the shares of its capital stock for the debts due it from the stockholders, nevertheless such a lien may be acquired either when given by statute or when such right is

<sup>1</sup> See *post*, sec. 54.

<sup>2</sup> See *Stickley v. Liberty Cycle Mfg. Co.* (N. J. Eq.), 32 Atl. 708; *Kennett v. Company*, 68 N. H. 432; 39 Atl. 585; *Harris v. McGregor*, 29 Cal. 124.

<sup>3</sup> *Van Etten v. Eaton*, 19 Mich. 187; *McConnell v. Company* (Mont.), 74 Pac. 194.

<sup>4</sup> See *Johnson v. Mason Lodge*, 21 Ky. Law Rep. 493; 51 S. W. 620.

<sup>5</sup> See Part III. Table 9, page 579.

<sup>6</sup> *Costello v. Company*, 69 N. H. 405, 43 Atl. 640; *Young v. Vongh*, 23 N. J. Eq. 325; *Moore v. Bank*, 52 Mo. 377; *In re Klaus*, 67 Wis. 401; 29 N.W. 582; *Farmers', etc. Bank, v. Wasson*, 48 Ia. 336; *Cont. T. R. Co. v. Toledo, etc. Ry. Co.*, 72 Fed. 92.

<sup>7</sup> *Brinkerhoff, etc. Co. v. Company*, 118 Mo. 447; 24 S. W. 129.

preserved by inserting provisions therefor in the Articles of Incorporation, or by the passage of a valid by-law, or by inserting a provision therefor in the stock certificates.<sup>1</sup>

§ 31. **Power to levy Assessments against the Stockholders with the Right to forfeit their Stock for Non-payment thereof.** — With some few exceptions the right to forfeit stock for non-payment of valid assessments levied against it is preserved by statute in most of the States and Territories.<sup>2</sup> Even in the absence of such statute the right to forfeit stock for non-payment of valid assessments when given to the corporation by its by-laws will probably be enforced by the courts. In any event the common law remedy would exist, giving the corporation the right to recover judgment against the delinquent stockholders for the amount of such assessments.<sup>3</sup>

In all cases the right to forfeit stock is considered to be merely a cumulative remedy.<sup>4</sup> The right to levy assessments upon stockholders does not exist after payment by such stockholders for their stock in full, unless the power to do so is conferred either by statute, by the articles of incorporation, or by the unanimous consent of all the stockholders.<sup>5</sup> But even in the absence of express power to declare a forfeiture of stock for non-payment, a corporation may sue for amount of subscription to the capital stock, and on failure to collect the amount subscribed may secure payment by sale of stock subscribed.<sup>6</sup>

On the general subject of assessments the following may be said : provisions for the forfeiture of capital stock for the non-payment of assessments must be just and reasonable in order to be valid.<sup>7</sup> The terms of the statute in any event must be strictly complied with.<sup>8</sup> The power to levy assessments rests in the directors by virtue of their office and not in the stockholders.<sup>9</sup> Even where

<sup>1</sup> *Union Bank v. Laird*, 2 Wheaton (U. S.), 390; *St. Louis Per. Ins. Co. v. Goodfellow*, 9 Mo. 149; *Van Sands v. Bank*, 26 Conn. 144; *Sargent v. Insurance Co.*, 25 Mass. 90. See also *Atchison Bank v. Durfee*, 118 Mo. 431; 24 S. W. 133; *V. G. B. Co. v. Bloede*, 84 Md. 129; 34 Atl. 1127; *Bishop v. Globe Co.*, 135 Mass. 132.

<sup>2</sup> See Part III. Table 17, page 587.

<sup>3</sup> *San Joaquin v. Beecher*, 101 Cal. 70; 35 Pac. 349.

<sup>4</sup> *M. F. & N. Co. v. Hall*, 121 Mass. 272; *Raymond v. Caton*, 24 Ill. 123; *Lesseps v. Architects' Co.*, 4 La. Ann. 316.

<sup>5</sup> *Enterprise Ditch Co. v. Moffitt*, 58

Neb. 642; 79 N. W. 560; *Duluth Club v. McDonald*, 74 Minn. 254; 76 N. W. 1128; *State v. Association*, 23 N. J. Law, 195; *Sullivan Co. Club v. Butler*, 26 N. Y. Miscellaneous Reports, 306; *Mayberry v. Meade*, 80 Me. 27; 12 Atl. 635; *Price's Appeal*, 106 Pa. St. 421; *Weeks v. Company*, 55 N. Y. Sup. Ct. 1.

<sup>6</sup> *Chase v. Company*, 5 Lea (Tenn.), 415.

<sup>7</sup> *Crissey v. Cooke*, 67 Kan. 20; 72 Pac. 541.

<sup>8</sup> *P. G. T. R. Co. v. Graham*, 11 Metcalf, 1.

<sup>9</sup> *Chouteau Ins. Co. v. Floyd*, 74 Mo. 286.

the statute expressly gives power to the stockholders to levy assessments they may doubtless delegate this power to directors.<sup>1</sup> Directors, however, cannot lawfully delegate such power to ministerial officers.<sup>2</sup>

§ 32. **Power to authorize Voting by Proxy at Stockholders' Meetings.**—At common law the right of stockholders to vote by proxy was not recognized. The right in order to be available must be granted either by statute, charter, or appropriate by-law.<sup>3</sup> Voting by proxy is not however *per se* unlawful.<sup>4</sup> Therefore the right may be secured to stockholders by appropriate by-law duly passed even without a statute authorizing it.<sup>5</sup>

§ 33. **Power to permit Cumulative Voting at Election of Directors.**—The right of cumulative voting exists where a stockholder has a number of votes equal to the number of shares held by him multiplied by the number of directors to be chosen, and is allowed to cast or distribute them as he sees fit. The purpose thereof is to secure minority representation on the board of directors. To authorize cumulative voting the right must be preserved either by constitutional, statutory, or charter provision or by the passage of a by-law looking to that end.<sup>6</sup>

If the right is conferred absolutely by constitutional or statutory provision, it cannot be taken away by means of a by-law or resolution denying such right to stockholders.<sup>7</sup>

In twenty-one of the Commonwealths the right to cumulate votes is secured to stockholders either by constitutional enactment or by statutory provision.<sup>8</sup>

§ 34. **Power to issue Stock as full paid in Exchange for Property or Services.**—In the quaint wording of an English case, "stock must be paid for, in the absence of constitutional or statutory provision providing otherwise, "in meal or in malt;" that is, in money or in money's worth.<sup>9</sup> Forty of the States have enacted laws authorizing the payment of stock not only in cash but in

<sup>1</sup> *Rives v. Company*, 30 Ala. 92.

<sup>2</sup> *In re County Palatine L. & D. Co.*, L. R. 9 Ch. 691.

<sup>3</sup> *Harvey v. Company*, 118 N. C. 693; 24 S. E. 489; *People v. Crossley*, 69 Ill. 195; *McKee v. Company (Ia.)*, 98 N. W. 609.

<sup>4</sup> *M. & O. Railroad Co. v. Nicholas*, 98 Ala. 92; 12 Sou. 723.

<sup>5</sup> *State v. Tudor*, 5 Day (Conn.), 329; *Commonwealth v. Detwiler*, 131 Pa. St. 614; 18 Atl. 990.

<sup>6</sup> *Pierce v. Commonwealth*, 104 Pa. St. 150; *Schmidt v. Mitchell*, 101 Ky. 570; 41 S. W. 929; *State v. Stockley*, 45 O. St. 304; 13 N. E. 279; *State v. Greer*, 78 Mo. 188; *Baker's Appeal*, 109 Pa. St. 461.

<sup>7</sup> *Tomlin v. Bank*, 52 Mo. App. 430; *Commonwealth v. Yetter*, 190 Pa. St. 488; 43 Atl. 226.

<sup>8</sup> See Part III. Table 9, page 579.

<sup>9</sup> *Drummond's Case*, L. R. 4 Ch. 772.

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services or property.<sup>1</sup> Some of the States—for example, Alabama and Virginia—have somewhat elaborate provisions on the subject.

Thus, in Alabama, stock may be issued in exchange for all such real and personal property as may be necessary or convenient for the efficient construction, operation, and maintenance of its works or plants, lines, shops, factories, or other buildings, or for the conduct and management of its business or as its purposes may require.<sup>2</sup>

In Virginia the new Incorporation Act authorizes subscriptions to the capital stock to be paid for in money, land, or other property, real or personal, leases, options, mines, minerals, mineral rights, patent rights, rights of water or easements, contracts, labor, or services.<sup>3</sup>

Even in those few Commonwealths where no statutes exist authorizing the payment of stock in property or services, the courts will presume that corporations have inherent power to purchase property and labor and pay for the same in stock instead of money, provided the transaction whereby the stock is to be issued in exchange for such property or services is made in good faith and no fraud is perpetrated upon stockholders or creditors.<sup>4</sup>

The statute to prohibit absolutely the payment of subscriptions to the capital stock in property or services must be clearly restrictive in character.<sup>5</sup> The only effect apparently of the absence in particular Commonwealths of any provision, constitutional or statutory, authorizing the payment of stock in property or services, is to induce the courts to adopt what is known as the “true value rule”<sup>6</sup> rather than the “good faith rule.”<sup>7</sup> But in the Commonwealths referred to, the character of the property, labor, or services accepted in exchange for stock must be strictly such as the corporation under its charter has the power to acquire, and when property is so taken it must be fairly represented to the corporation and for a just, lawful, and needed equivalent for the money subscribed.<sup>8</sup>

<sup>1</sup> See Part III. Table 10, page 580.

<sup>2</sup> See Alabama Session Laws, 1903, p. 395, sec. 7, subdiv. c.

<sup>3</sup> See Session Laws of Virginia, 1903, chap. 270.

<sup>4</sup> *Liebke v. Knapp*, 79 Mo. 22; *Beach v.*

*Smith*, 30 N. Y. 116; *Shannon v. Stevenson*, 173 Pa. St. 419; 34 Atl. 218.

<sup>5</sup> See *Knox v. Company*, 86 Ala. 180; 5 So. 578.

<sup>6</sup> See *post*, sec. 104.

<sup>7</sup> See *post*, sec. 105.

<sup>8</sup> *Liebke v. Knapp*, 79 Mo. 22; *Powell*

§ 35. **Power to dispose of Corporate Assets as an Entirety.**— In ten of the Commonwealths express power is conferred upon corporations to dispose of their entire corporate assets by obtaining the consent of a certain percentage of the stockholders to such disposition.<sup>1</sup> Much controversy has arisen as to whether or not express statutory power is necessary in order to authorize transfer by a corporation of the entire corporate assets. At common law neither the directors nor a majority of the stockholders had power to sell or otherwise transfer all of the property of an acting and prosperous corporation able to achieve the objects of its creation as against the dissent of a single stockholder.<sup>2</sup>

The view is taken by the New Jersey court in *Coler v. Company*<sup>3</sup> that the sale of the corporate assets as an entirety is equivalent to a dissolution, and therefore can only be done through the courts under statutory authority. Many courts, however, take the view that it can be done where it is not in fraud of the rights of creditors or in violation of charter or statutory restrictions, and this, too, by a majority of the stockholders against the dissent of a minority where the exigencies of the business seem to require it.<sup>4</sup> Thus, it has been asserted that "it is a well settled rule that a strictly private corporation has the same right to dispose of its property that an individual has, and that when insolvent or in a failing condition it may sell all thereof without the consent of all of the stockholders. It is the general rule, however, that neither the directors nor a majority of the stockholders of a corporation have power at common law to sell or otherwise transfer all its property while the corporation is a going, prosperous concern against the dissent of any shareholder."<sup>5</sup>

It may be added in this connection that the right to exist as a

*v. Murray*, 3 N. Y. App. Div. 273; 38 N. Y. Sup. 233; *Id.* 157 N. Y. 717; 53 N. E. 1130; *Kimball v. Company*, 69 N. H. 485; 45 Atl. 253; *Montgomery v. Company*, 48 N. Y. App. Div. 12; 62 N. Y. Sup. 606; *Id.* 168 N. Y. 657; 61 N. E. 1131.

<sup>1</sup> See Part III. Table 9, page 579.

<sup>2</sup> *Forrester v. Company*, 21 Mont. 544; 55 Pac. 229; *Idem*, 74 Pac. 1088; *People v. Ballard*, 134 N. Y. 269; 32 N. E. 54; *California Bank v. Kennedy*, 167 U. S. 362; 42 L. E. 198; *B. & M. C. C. & S. M.*

*Co. v. M. O. P. Co.*, 89 Fed. 529; *Metcalf v. A. S. F. Co.*, 122 Fed. 115; *Traer v. Company (Ia.)*, 99 N. W. 290.

<sup>3</sup> 64 N. J. Eq. 117; 53 Atl. 680.

<sup>4</sup> *Treadwell v. Company*, 7 Gray (Mass.), 393; *Martin v. Zellerbach*, 38 Cal. 300; *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 543; *Featherstonhaugh v. Company, L. R.* 1 Eq. 318; *Bartholomew v. Company*, 69 Conn. 521; 38 Atl. 45.

<sup>5</sup> *Traer v. Company (Ia.)*, 99 N. W. 290.

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corporation is not alienable.<sup>1</sup> The sale of all the corporate property does not operate to dissolve the corporation.<sup>2</sup>

§ 36. **Power to voluntarily dissolve the Corporation without Recourse to the Courts.**—The dissolution of a corporation is a peculiar function that rests primarily in the legislature, and is conferred upon courts or upon the corporation itself, only by explicit legislative authority.<sup>3</sup> Stockholders, in the absence of statutory provision, cannot extinguish the corporate charter or dissolve the corporation, nor can a court of equity accomplish a similar result at their instance.<sup>4</sup> In all the States some provision is made for dissolution of corporations. For example, in Alabama, Connecticut, New Jersey, North Carolina, Virginia, and West Virginia the incorporators have the right to surrender the charter before organization. In twenty-seven of the Commonwealths corporations may be dissolved under statutory authority without recourse to the courts.<sup>5</sup>

The doctrine that dissolution can only be effected by the joint act of the State and corporation is set forth in a Massachusetts case as follows:<sup>6</sup> "Charters are in many respects compacts between government and corporators. And as the former cannot deprive the latter of their franchises in violation of the compact, so the latter cannot put an end to the compact without the consent of the former. It is equally obligatory on both parties. The surrender of the charter can only be made by the formal act of the corporation; and will be of no avail until accepted by the government. There must be the same agreement of the parties to dissolve, that there was to form the compact. It is the acceptance which gives efficacy to the surrender. Dissolution of a corporation, it is said, extinguishes all its debts. The power to dissolve itself by its own act would be a dangerous power, and one which cannot be supposed to exist."<sup>7</sup>

In this connection it may be observed that the stockholders

<sup>1</sup> *Detroit Citizens' Street Ry. Co. v. Common Council*, 125 Mich. 673; 85 N. W. 96; *Pearce v. R. R.*, 21 How. 441; 16 L. E. 184; *State v. Company*, 40 Kan. 96; 19 Pac. 349.

<sup>2</sup> *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 543; *Sullivan v. Company*, 39 Cal. 459.

<sup>3</sup> *Olds v. Company (Mass.)*, 70 N. E. 1022.

<sup>4</sup> *Benedict v. Company*, 49 N. J. Eq. 235; 23 Atl. 485.

<sup>5</sup> See Part III. Table 8, page 578.

<sup>6</sup> *Boston Glass Manufactory Co. v. Langdon*, 24 Pick. 49.

<sup>7</sup> See also *Davis v. Company*, 87 Ala. 633; 6 Sou. 140.

alone have power to surrender the charter.<sup>1</sup> It will be remembered, of course, that the expiration of the time limited by the charter as a corporation's term of existence is held in most jurisdictions to result in the dissolution of such a corporation.<sup>2</sup> But neither insolvency nor sale of all of the corporate property, nor cessation of business operates to dissolve the corporation.<sup>3</sup>

But in the absence of any provision in the charter limiting corporate existence, the corporation is entitled to perpetual life.<sup>4</sup> If the articles provide for a longer period of corporate existence than the law allows, the excess is void.<sup>5</sup> In many of the States statutes exist providing that the corporation shall continue in existence for periods ranging from three to five years after the expiration of the time limited for its existence for the purpose of winding up its affairs.<sup>6</sup>

A majority of the States delegate to the courts the power to dissolve the corporation on application of stockholders or creditors.<sup>7</sup> The fact that certain States make the directors trustees for creditors on dissolution does not necessarily take away the jurisdiction of courts of equity to appoint a receiver.<sup>8</sup> Many States have statutes providing that upon the expiration of the time limited by their charter as the duration of their corporate existence, they shall nevertheless be continued for a certain period of time in order to permit of the winding up of the corporate affairs. Without such statutory provisions suits cannot be maintained against the corporation after such period has expired.<sup>9</sup>

§ 37. **Power to insert in the Charter Provisions for the Regulation of the Internal Affairs of the Corporation.**—The incorporation acts of eighteen of the States contain provisions relative to the contents of certificates of incorporation, authorizing the insertion therein of provisions for the regulation of the business of the corporation, or for the purpose of defining or limiting the powers of the corporation, its officers, directors, and stockholders.<sup>10</sup>

<sup>1</sup> *Jones v. Bank*, 10 Col. 464; 17 Pac. 272; *Barton v. Association*, 114 Ind. 226; 16 N. E. 486.

<sup>2</sup> *Mason v. Company*, 25 Fed. 882.

<sup>3</sup> *Davis v. Company*, 87 Ala. 633; 6 So. 140.

<sup>4</sup> *F. L. S. Co. v. Clowes*, 3 N. Y. 470.

<sup>5</sup> *People v. Cheeseman*, 7 Col. 376; 3 Pac. 716.

<sup>6</sup> See Part III. Table 17, page 587; see

also *Foster v. Bank*, 16 Mass. 245; *Nashville Bank v. Petway*, 3 Hum. (Tenn.) 522.

<sup>7</sup> See *Miner v. Company*, 93 Mich. 97; 53 N. W. 218; *Wheeler v. Company*, 143 Ill. 197; 32 N. E. 420.

<sup>8</sup> *City Pottery Co. v. Yates*, 37 N. J. Eq. 543.

<sup>9</sup> *Nelson v. Hubbard*, 96 Ala. 238; 11 Sou. 428.

<sup>10</sup> See Part III. Table 10, page 580.



Unless the law expressly permits the insertion of such provisions in the certificate of incorporation, State officials are justified in refusing to accept and file certificates containing such provisions. This generally on the ground that in the absence of statutory provision so authorizing, they are properly the subject of by-laws and not proper for insertion in the certificate of incorporation.<sup>1</sup>

Leaving out of consideration the fact of acceptance by State officials, and approval by them of certificates of incorporation containing such provisions as are here referred to, when there is no statute authorizing the same, the following may be said: The general test as to whether provisions not called for by the statutes are valid when inserted in certificates of incorporation must be determined from their character. If they are not powers, but are merely in the nature of by-laws, they are invalid as not being called for by the statute. If they are powers, but not authorized by statute, to permit such insertion in the certificate of incorporation would be equivalent to saying that the legislature had clothed the incorporators with a number of their legislative functions.<sup>2</sup> On this general subject the opinion of the Supreme Court of Alabama in a leading case in that State is instructive: "It is apparent," observes the court, "that the creation of corporations under general law rather than by special act was not intended to work any essential change in their nature and character. Whether deriving existence from a special law, or from incorporation under the general law, the corporation is an artificial being of legislative creation, having no other powers or properties than such as the law confers, or which may be incidental to their very existence. The mode of incorporation the statutes have carefully prescribed. The persons proposing to be incorporated must file and cause to be recorded in a designated public office a declaration in writing, stating the name of the corporation, the objects for which it is formed, the amount of the capital stock, the number of shares into which it is divided, the names of the stockholders, and the number of shares each may hold. The office and the effect of the declaration the statutes do not leave in doubt —

<sup>1</sup> *In re* Application for charter, 10 Phil. Rep. 130; *Van Pelt v. Gardner*, 54 Neb. 701; 75 N. W. 874; *Bent v. Underdown*, 60 N. E. 307; 156 Ind. 516; *Heck v. McEwen*, 12 Lea, 97; *T. A. L. Co. v. Massey*, 56 S. W. 35; *E. P. R. Co. v. Vaughan*, 14 N. Y. 546; *G. L. D. Co. v. Perkins* (Texas), 26 S. W. 256; *Albright v. Association*, 102 Pa. St. 411; *Shoun v. Armstrong* (Tenn.), 59 S. W. 790.

<sup>2</sup> *People ex rel. v. C. G. T. Co.*, 130 Ill. 268; 22 N. E. 798.

when recorded, the persons signing it and their successors become a body corporate by the name stated therein and with the powers conferred by law. It is an acceptance by the corporation, under the name designated, for the objects expressed, of the corporate powers and capacity the law confers, and a statement of the principal constituents of the corporation, — the amount of the capital stock, the names of the stockholders, and the quantity of interest each has in the capital stock. There is no authority of law for introducing more into it, and if more be introduced, it is mere surplusage, not adding to or detracting from the force of the declaration. A controlling purpose, as we suppose, in authorizing or in compelling the creation of corporations under general laws, is to secure uniformity and equality of corporate powers, functions, and privileges; that all corporations of the same class, formed for like purposes, should possess the same capacities and properties, and exercise and enjoy the same franchises and privileges. Unless it was intended to work a radical change in the nature and character of these artificial beings, the mere creatures of the law, and to subvert the whole theory which has prevailed in reference to them, it cannot have been contemplated that they should for themselves create powers and privileges by declaration or reservation, whether the declaration or reservation is expressed in the articles of incorporation or in the by-laws ordered by the corporators for their government. Such declarations or reservations would soon become more liberal and diverse than was the liberality and diversity of the grants of corporate powers by special legislative enactment, the evil it was intended to remove. Of every corporation formed under the general law, the law itself becomes the charter, defines and enumerates the powers which are to be exercised, the nature and extent of corporate franchises and privileges. The declaration of incorporation, the by-laws adopted for corporate government, do not form the charter, or define or enumerate the corporate powers. These are the acts of the corporators. The charter is the grant from the sovereign power of the State, and by that source only can be varied or enlarged.”<sup>1</sup>

§ 38. **Power to authorize Directors to adopt By-Laws.** — In a number of the States statutes exist authorizing the directors to adopt by-laws under certain conditions. The conditions here re-

<sup>1</sup> G. L. & H. Ins. Co. v. Kamper, 73 Ala. 325.

ferred to are usually either that the right referred to should be expressly inserted in the certificate of incorporation, or, in lieu thereof, that the stockholders expressly delegate this power to the directors.<sup>1</sup> Unless the statute or charter provides otherwise, the by-laws must be adopted by the stockholders.<sup>2</sup> However, where the right to adopt by-laws is expressly limited to the directors, it is exclusive.

§ 39. **Power to authorize Appointment of Executive Committee from the Board of Directors.** — In Connecticut, Delaware, Massachusetts, Nevada, New Jersey, Virginia, and West Virginia statutes exist expressly authorizing directors to appoint an executive committee from their own number to whom may be delegated, to such extent as shall be provided in the by-laws, any of the powers of the board of directors. There has as yet been no fair test in the courts as to the validity of such statutes where an attempt has been made by the directors to practically delegate all their powers to an executive committee. A reasonable view of the matter would seem to be that where the statute clearly conveys such power it is valid when exercised by an executive committee duly appointed from the full board of directors pursuant to the statute in such case made and provided.<sup>3</sup>

The power of the board of directors is not a delegated authority, and when the transaction of the business of the company will be facilitated by the appointment of an executive committee such appointment may unquestionably be made.<sup>4</sup>

§ 40. **Power to enlarge or diminish Corporate Powers.** — The right here referred to becomes one of importance only in those States wherein it is permitted to insert specific corporate powers in the articles of incorporation. The powers here referred to are such, for example, as the right of the corporation to acquire its own stock; to hold stock and bonds in other corporations; to delegate to directors power to adopt by-laws, etc. It will be found that wherever such a right exists the power to amend will be found sufficiently broad to permit of the enlargement or diminishing of

<sup>1</sup> See Part III. Table 12, page 582.

<sup>2</sup> See *Norton, etc. Co. v. Wyson*, 51 Ind. 4; *Salem Bank v. Bank*, 17 Mass. 1; *Watson v. Company*, 56 Mo. App. 145; *State v. Curtis*, 9 Nev. 325.

<sup>3</sup> *S. E. L. Co. v. Bank*, 127 N. Y. 517; *Pac.* 356.

28 N. E. 467; *Black, etc. Co. v. Holway*, 85 Wis. 344; 55 N. W. 418; *Andres v. Fry*, 113 Cal. 124; 45 Pac. 534; *Bank v. Walton Iron Co.*, 30 Bull. (Ohio) 382.

<sup>4</sup> *Leavitt v. Company*, 3 Utah, 265; 1

corporate powers by complying with the terms of the statute relative to such amendments.<sup>1</sup>

§ 41. **Power to change Par Value of Shares.** — Where the charter fixes the number and par value thereof, a corporation cannot increase or diminish the par value of its shares without legislative sanction.<sup>2</sup> If however the certificate of incorporation says nothing as to the number and par value of shares, they may doubtless be changed by the stockholders of the corporation without legislative sanction.<sup>3</sup>

The legal effect of a change in the number of shares without any corresponding increase or decrease in the par value thereof, is to increase or decrease the capital stock, and this can only be done by permission of the legislature.<sup>4</sup>

In thirty-six of the States the par value of the capital stock may be any amount, while in the remainder such par value is limited from amounts ranging from one dollar to one hundred dollars per share.<sup>5</sup> In some few of the States it will be noted that the provisions of the statutes limiting amendments fail to authorize changes in the par value of the shares of capital stock.<sup>6</sup>

§ 42. **Power of Bondholders to vote at Election of Directors.** — Very few of the States have enacted statutes giving to bondholders the right to participate in the election of directors. Virginia and Delaware are the exceptions to the general rule. Most of the States provide that the board of directors shall be elected by the stockholders, and thus by implication forbid the giving of the right to bondholders to vote at such election.<sup>7</sup> However, if neither by constitutional or statutory provision bondholders are barred from participating in the election of directors, such right may be bestowed upon them either by provision therefor in the charter or by proper by-law duly adopted.<sup>8</sup>

§ 43. **Power to classify Directors.** — Ordinarily the tenure of directors is fixed by statute, and where so fixed these provisions are of course controlling. If the statute requires directors to be elected

<sup>1</sup> *Peoria, etc. Co. v. Preston*, 35 Ia. 115; *P., etc. P. R. Co. v. Griffin*, 21 Barb. 454; *Pac. R. Co. v. Hughes*, 22 Mo. 291.

<sup>2</sup> *Droitwich Patent Salt Co. v. Curzon*, L. R. 3 Ex. 35; *Tschumi v. Hills*, 6 Kan. App. 549; 51 Pac. 619; *S. M. D. Cor. v. Ropes*, 6 Pick. (Mass.) 23.

<sup>3</sup> *S. & K. Ry. Co. v. Cushing*, 45 Me. 534.

<sup>4</sup> *Droitwich Patent Salt Co. v. Curzon*, L. R. 3 Ex. 35.

<sup>5</sup> See Part III. Table 4, page 565.

<sup>6</sup> See Part III. Table 14, page 575.

<sup>7</sup> *Durkee v. People*, 155 Ill. 354; 40 N. E. 626.

<sup>8</sup> *State v. McDaniel*, 22 O. St. 354.

annually, this by implication prohibits the classification of directors for terms in excess of the statutory limit.<sup>1</sup> In a large number of the States statutes exist expressly authorizing classification of directors.<sup>2</sup>

If the statute does not require annual election of directors, there would appear to be nothing illegal in a corporation's classifying its directors in any manner it sees fit so to do, provided (in the absence of statutory regulations) directors hold their office at the pleasure of the corporation.

§ 44. **Power to amend Articles before Organization.** — As has already been seen, the power to amend, if it exists at all, must be derived from the legislature. Very few of the Commonwealths have granted to incorporators the right to amend articles of incorporation before organization. Statutes, however, to that effect exist in Alabama, Connecticut, New York, New Jersey, North Carolina, and Virginia.

§ 45. **Power to surrender Charter before Organization.** — It is often an advantage to a corporation which does not care to avail itself of the right to actively engage in business, to surrender its charter to the State before organization, without going through the expensive and usually complicated proceedings incident to dissolution. Such right is expressly given in Connecticut, New Jersey, North Carolina, Virginia, and West Virginia.<sup>3</sup>

§ 46. **Power given to Minority Stockholders to compel Purchase of their Holdings upon Consolidation.** — In the States of Alabama, Connecticut, Massachusetts, Delaware, and New York statutory protection is afforded to minority stockholders in case the corporation has consolidated with another. The Connecticut statute may be briefly summarized as an example of such statutes.<sup>4</sup>

The act provides that any stockholder in any corporation consolidating, who at the time of such consolidation objects thereto in writing, may, within ten days after the agreement of consolidation has been filed for record in the office of the Secretary of State, demand in writing from the consolidated corporation payment of his stock; and such corporation shall within three months thereafter pay him the value of his stock at the date of

<sup>1</sup> *State v. McCullough*, 3 Nev. 202.

428; *Law v. Rich*, 47 W. Va. 634; 35 S. E. 858.

<sup>2</sup> See Part III. Table 14, page 584.

<sup>3</sup> *Mumma v. Company*, 8 Pet. U. S. 281; *Taylor v. Holmes*, 14 Fed. Rep. 498; *Houston v. Jefferson College*, 63 Pa. St.

<sup>4</sup> Sec. 79, chap. 194, of the Session Laws of 1903.

such consolidation. In case of disagreement as to the value thereof, such value shall be ascertained by three disinterested persons, to be chosen, one by the stockholder, one by the directors of the consolidated corporation, and the third by the two thus selected; and in case their award is not paid within thirty days from this date it shall become a debt of said consolidated corporation and may be collected as such. Upon receiving payment of the amount awarded, such stockholder shall transfer his stock to the consolidated corporation, which shall dispose of it on the best terms attainable.<sup>1</sup>

§ 47. **Incidental Powers, Definition and Enumeration of.** — An incidental power is one that is directly necessary or proper to the execution of an express power, and not one that has a slight or remote relation to it.<sup>2</sup> The term expresses those powers which flow necessarily out of the exercise of the express powers conferred by statute or by charter.<sup>3</sup>

The exercise of a power that might be beneficial to the principal business of the corporation is not necessarily incident to it.<sup>4</sup> The principal incidental powers may be enumerated as follows: (1) power to make contracts; (2) power to borrow money; (3) power to give and accept customary evidences of debt; (4) power to mortgage or pledge real and personal property; (5) power of amotion.

The implied powers which a corporation has in order to carry into effect those expressly granted, and to accomplish the purposes of its creation, are not limited to such as are indispensable for these purposes, but comprise all that are necessary in the sense of appropriate, convenient, and suitable, including the right of reasonable choice of means to be employed. Acts of a corporation which if standing alone or engaged in as a business would be beyond its implied powers, are not necessarily *ultra vires* when they are incidental to or form part of an entire transaction which in its general scope, is within the corporate purpose. The validity of such a transaction is to be determined from its general

<sup>1</sup> See *Lanman v. Company*, 30 Pa. St. 798; *People v. Company*, 175 Ill. 125; 51 42; *Mowrey v. Company*, 17 Fed. Cas. N. E. 664.  
No. 9891; 4 *Bissell*, 78; *Pittsburg*, etc.  
Ry. Co. v. *Garrett*, 50 O. St. 405; 34 N. E.  
493.

<sup>2</sup> See *U. M. Co. v. Bank*, 2 Col. 248;  
*Wright v. Hughes*, 119 Ind. 324; 21 N. E.  
907.

<sup>3</sup> *Hood v. Company*, 42 Conn. 112; <sup>4</sup> *Nicollet Nat. Bank v. Company*, 71  
*People v. Company*, 130 Ill. 268; 22 N. E. Minn. 413; 74 N. W. 160.

character considered as a whole rather than by segregation into individual parts and each regarded as distinct from the other.<sup>1</sup>

§ 48. **Power to make Contracts.** — A corporation is a creature of law, and may do any act or thing under contract the same as natural persons might do, subject to the rights conferred on it by the law of its creation or by its charter.<sup>2</sup> Where chartered in one State for any purpose, it may lawfully make a contract in furtherance of that purpose in any other State where not prohibited by the laws thereof.<sup>3</sup>

§ 49. **Power to borrow Money.** — The power to borrow money in carrying out the purposes of the corporation's organization is one of the incidental corporate powers.<sup>4</sup> In this connection it may be said that the power to borrow money has been held to imply the power to issue bonds.<sup>5</sup> However that may be, in addition to an enumeration in the statute of the power to borrow money, a majority of the business corporation acts expressly confer the right upon corporations to issue bonds.<sup>6</sup>

§ 50. **Power to give and accept Customary Evidences of Debt.** — This incidental power includes the right of corporations to make notes or bills of exchange, to accept drafts and notes, and to draw checks.<sup>7</sup>

§ 51. **Power to mortgage and pledge Real and Personal Property** — Every corporation has the incidental power to mortgage and pledge its real and personal property in order to procure and secure necessary loans to be made to the corporation.<sup>8</sup> It is sometimes said that a corporation has power to pledge both its issued and unissued shares.<sup>9</sup>

§ 52. **Power of Amotion.** — The power of amotion has reference to the removal of officers and directors. The term "dis-

<sup>1</sup> C. O. N. G. F. Co. v. Company, 60 Ohio, 96; 53 N. E. 711; Porter v. Company (Mont.), 74 Pac. 938.

<sup>2</sup> Hand v. Company, 143 Pa. St. 408; 22 Atl. 709; People v. Company, 70 N. Y. 569; MacGinniss v. Company (Mont.), 75 Pac. 89.

<sup>3</sup> Hall v. Company, 91 Ala. 363; 8 Sou. 348.

<sup>4</sup> See Ward v. Johnson, 95 Ill. 215; Wright v. Hughes, 119 Ind. 324; 21 N. E. 907.

<sup>5</sup> Commonwealth v. Smith, 10 Allen (Mass.), 448; Smith v. Law, 21 N. Y. 296.

<sup>6</sup> See Part III. Table 14, p. 584.

<sup>7</sup> Moss v. Averell, 10 N. Y. 449; Lucas v. Pitney, 27 N. J. Law, 221; Smead v. Company, 11 Ind. 104; Strauss v. Company, 52 O. St. 59; Morris v. Cheney, 51 Ill. 451.

<sup>8</sup> State v. Company, 61 Kan. 547; 60 Pac. 337; Farmers' Bank v. Company, 108 Ky. 447; 56 S. W. 719; Savings Trust Co. v. Company, 112 Fed. 693.

<sup>9</sup> See U. Savings Ass'n v. Seligman, 92 Mo. 635; 15 S. W. 630; Burgess v. Seligman, 107 U. S. 20; 2 S. Ct. 10.

franchisement" has reference solely to the deprivation of the right to vote as against stockholders.<sup>1</sup> The right is delegated by statute to the stockholders in fifteen of the Commonwealths.<sup>2</sup> In the absence of such statute there is no power in the stockholders to remove directors before the expiration of their allotted terms, except for cause, provided such terms are fixed by statute.<sup>3</sup>

It seems to have been the rule of the common law that every corporation had an implied power to remove directors for cause when their terms of office were not prescribed by statute.<sup>4</sup> In New York it has been held that the power to remove directors may be covered by by-law.<sup>5</sup>

The main grounds which justify amotion where no statute exists limiting the same, are the conviction of crime on the part of directors, misconduct in office, and violation of statutory provisions.<sup>6</sup> If the charter or statute provides steps which must be taken to remove directors, such statute must be strictly followed.<sup>7</sup> In the exercise of this power the stockholders meet, charges must be preferred, and the director removed by a majority vote.<sup>8</sup> Equity will not interfere in such matters in the absence of usurpation or gross negligence.<sup>9</sup>

§ 53. *The Modern Doctrine of Ultra Vires.*—To define in a general way the ancient doctrine of *ultra vires* is to say that a contract of a corporation which is unauthorized by or in violation of its charter, or entirely outside of the scope of the express purposes of its creation or beyond the powers granted to it by the charter or by statute, is void in the sense of being no contract at all, because of a total want of power to enter into it; that such contract will not be enforced by any species of action in a court of justice; that being void *ab initio*, it cannot be made good by ratification or by any succession of renewals, and that no performance on either side can give validity to the unlawful contract, or form a foundation of any right of action upon it.<sup>10</sup>

<sup>1</sup> *White v. Brownell*, 4 Abb. Pr. n. s. 162.

<sup>2</sup> See Part III. Table 9, page 579.

<sup>3</sup> *Nathan v. Tompkins*, 82 Ala. 437; 2 So. 747.

<sup>4</sup> *Fawcette v. Charles*, 13 Wend. 473.

<sup>5</sup> *Douglass v. Company*, 118 N. Y. 484; 23 N. E. 806.

<sup>6</sup> *Rex v. Richardson*, 1 Burr. 517.

<sup>7</sup> *State v. Trustees, etc.*, 5 Ind. 77.

<sup>8</sup> *Rex v. Taylor*, 3 Salk. 231; *R. E. G. v. Smith*, 10 Wood, 74; *DeLacey v. Company*, 1 Hawks (N. C.), 274; *Purdy v. Ass'n (Mo. Ap.)*, 74 S. W. 486.

<sup>9</sup> *Baker v. Backus*, 32 Ill. 79; *Park v. Grant Locomotive Works*, 40 N. J. Eq. 114; 19 Atl. 62; *Id.* 45 N. J. Eq. 241, 362; 3 Atl. 162.

<sup>10</sup> See Thompson on Corporations, vol. v. § 5968; for history of doctrine of *ultra*



The necessities of modern business and the arrival by the courts at a better conception of the true relations governing the matter, have brought about radical changes in the doctrine as here stated. What we propose to do in this connection is to set forth what may be termed "the modern doctrine of *ultra vires*." Preliminary to this a statement should be made showing how the doctrine of *ultra vires* originated, and how it came to be applied from time to time.

In the early days corporations were created mainly for public purposes, and it was in connection with quasi-public corporations that the doctrine of *ultra vires* first originated. In view of this fact, as has been well stated, there was no reason why the doctrine should ever have been applied to private corporations not formed for public purposes.<sup>1</sup>

The grounds of the old doctrine are stated by Judge Gray as follows:<sup>2</sup> "That the charter of a corporation which contains its grant of powers is a public statute, which all persons are bound to take notice of and be governed by; that the restraints thereby established on the alienation of the franchises of the property of the corporation are founded on considerations of public policy, which neither the corporation nor any other persons can be allowed to evade or disregard." In a later case, when sitting on the United States Supreme Court bench, the same judge observed:<sup>3</sup> "The reason a corporation is not liable on a contract *ultra vires* are the interests of the public that the corporation shall not transcend the powers granted; the interests of the stockholders that the capital stock shall not be subjected to the risk of enterprises not contemplated by the charter, and therefore not authorized by the stockholders in subscribing for the stock; the obligation of every one entering into a contract with a corporation to take notice of the legal limits of its powers."

Turning now to this statement, attention should be called to those reasons which have aided a great majority of the courts in evolving a new doctrine of *ultra vires* better suited to the conditions of the present time. In the first place, except in the case of what is known as "quasi-public-private corporations," the

*vires* see B. G. L. Co. v. Claffy, 151 N. Y. 24; 45 N. E. 390.

<sup>2</sup> Richardson v. Sibley, 11 Allen, 65.

<sup>3</sup> Pittsburgh, etc. Co. v. Keokuk, etc.

<sup>1</sup> See Hennesey v. Muhleman, 40 N. Y. Bridge Co., 131 U. S. 37; 9 S. Ct. 770. Ap. Div. 175; 57 N. Y. S. 854.

public has no direct interest whatever in the nature of the powers vested in them. Corporations are no longer created by special act, except in a few cases, and it would be a poor rule which would require a stranger to take notice of the contents of charters not public and difficult to obtain. In modern times the placing in articles of incorporation of a large number of purposes, in some cases giving the corporation almost unlimited scope along business lines, has practically removed the objections spoken of above, to the effect that capital shall not be subjected to the risk of enterprises not contemplated by the charter.

Turning now to the changes already referred to, as having taken place in the doctrine of *ultra vires*, they may be stated in the form of the following propositions: (1) "The claim that a contract is void, because under the charter beyond the power of a corporation is seldom recognized as a defence to an agreement otherwise objectionable, and never where it would defeat the ends of justice or become a shield against wrong;"<sup>1</sup> (2) the doctrine of *ultra vires* is not usually applied where the party setting it up has received a benefit from the unlawful act relied upon as a defence;<sup>2</sup> (3) where the most that can be said of a corporate act is that it is an abuse of power, the State alone can act;<sup>3</sup> (4) the doctrine that persons dealing with corporations are bound to take notice of their power is now practically done away with by the application of the doctrine of estoppel in the case of completed contracts.

Again, it should be carefully noted that by the fullest application of the doctrine of estoppel where attempts have been made to set aside contracts on the ground that they were *ultra vires* of the corporate powers, the courts have practically revolutionized the doctrine as it once existed in this country. The doctrine of estoppel here referred to is of the character referred to by Lord Denman in *Pickard v. Sears*,<sup>4</sup> where he says that where one by his words or conduct wilfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is precluded from averring against the latter a different state of things as existing at the same time. By an extended application of the

<sup>1</sup> *Int. Trust Co. v. Company*, 70 N. H. 118; 46 Atl. 1054; *B. R. V. O. Co. v. Hanley*, 15 Utah, 506; 50 Pa. St. 611.

<sup>2</sup> *Norton v. Bank*, 61 N. H. 589; *Smith v. Bank*, 72 N. H. 4.

<sup>3</sup> *Rector v. Hartford Deposit Co.*, 190 Ill. 380; 60 N. E. 528.

<sup>4</sup> 6 Ad. & El. 469.

doctrine laid down by Lord Denman, the courts hold that where there has been no express violation of the law the corporation is estopped by its own contract or conduct from setting up, as a defence to an action to enforce such contract, that it was not in the power of the corporation to make it. So too the courts hold that where a private corporation enters into a contract in excess of its granted powers and has received the benefits of the contract which the other parties acted upon, the corporation is estopped to repudiate the contract on the ground that it was *ultra vires*. Repeatedly the courts have held that where a contract with a corporation — the making of which is beyond its chartered powers — has been fully executed by both parties to the contract, neither of them can assert its invalidity as a cause of action as against the other.

Again, it may be stated that where a corporation has acted in excess of its granted powers or in the face of express or implied statutory prohibition it is clear that there can be no objection raised on that ground between it and a private party, for this can only be raised by the State in a direct proceeding to forfeit the franchises of the corporation.<sup>1</sup> Again, it may be stated that the doctrine of estoppel, as well as the doctrines of ratification and confirmation by acquiescence, apply under modern rules to *ultra vires* contracts.<sup>2</sup>

An Ohio court has divided unauthorized acts of a corporation into two classes: (1) where it has no power to do what it promises or to receive what is promised; (2) where it has no power to do what it promises but may receive what is promised. In each class, it was said, if action is brought, one of three states of fact will appear: (a) where it has performed its promise, but the other party has not; (b) where the other party has performed, but it has not; (c) where neither party has done all that was promised. In case 1 a the corporation cannot recover; the contract has no existence. In case 2 a the corporation may recover for performance if it has eliminated the *ultra vires* element and there is no want of mutuality. In cases 1 b and 2 b what remains to be done is *ultra vires*, and neither party can recover. In cases 1 c and

<sup>1</sup> Union Nat. Bank v. Matthews, 98 U. S. 621; Pullman v. Upton, 96 U. S. 328.

<sup>2</sup> See Water Works Co. v. Low, 46 N. Y. Sup. 633; Woodruff v. Erie R. R. Co., 93 N. Y. 609; Miller v. Am. Mut. Acci. Ins. Co., 92 Tenn. 167; Wood v. Corry Water

Works Co., 44 Fed. 146; Linkauf v. Lombard, 137 N. Y. 417; 33 N. E. 472; Nims v. School, 160 Mass. 177; 35 N. E. 776; J. B. Farrell Company v. Wolf, 96 Wis. 10; 70 N. W. 289; Smith v. Bank of New England, 72 N. H. 4.

2 *c* neither party can recover because the contract is *ultra vires*. Recovery cannot be helped by promises of the officers. Pure assertion of law cannot give rise to estoppel. Nor is recovery aided by the fact that a consideration was conveyed to an individual as trustee for the corporation.<sup>1</sup>

§ 54. **Corporate Domicile.**—Corporations, like individuals, must have a place of abode.<sup>2</sup> As far back as Lord Coke's time a place of abode was held to be of the essence of a corporation.<sup>3</sup> Unless provided otherwise by statute, the rule at the present time is that corporations to have any legal existence must have a home within the boundaries of the State which creates it.

In the words of Justice McAdam in *Kruse v. Dusenbury*,<sup>4</sup> "A corporation cannot become a tramp. It must have a domicile—not in theory, but in fact—within the sovereignty which created it. . . . A corporation in the nature of things must have some office or place of business in the State where it was incorporated, so that creditors may know where to find it, that they may present and if necessary prosecute their just demands. The statute contemplates that such place of business shall exist not only in name, but in fact; for, if the corporation has no place of business in the state where it was incorporated, it does not affect the charter, but it cannot have branch offices elsewhere. Like a live tree, it cannot consist of branches only, but must take root in its native soil before it can extend its branches into other States."

Most of the States have statutes expressly requiring the maintenance of a domiciliary office within the State of the corporation's origin, and failure to comply with this requirement renders the charter of such corporation liable to forfeiture upon proper action taken by the State.<sup>5</sup>

Thus in Minnesota a charter was forfeited for the failure on the part of the corporation to maintain a domiciliary office therein. In this case,<sup>6</sup> the court observed, "that independently of statute, it is incumbent upon a private corporation to keep its principal place of business, its books and records, and its principal offices in

<sup>1</sup> *Vos v. Association*, 9 Bull. (Ohio) 194. Tex. 80; *State v. Company*, 45 Wis. 579;  
<sup>2</sup> *In re Spring Valley Water Co.*, 17 Cal. 132. Simmons v. Company, 113 N. C. 147; 18 S. E. 117; *State v. Company*, 58 Minn. 330; 59 N. W. 1048; *State v. Company*, 59 Kan. 151; 52 Pac. 422.

<sup>3</sup> See *Sutton's Hospital Cases*, 5 Coke's Rep. 253.

<sup>4</sup> 19 Wk. Di. (N. Y.) 201.

<sup>5</sup> See *N. & S. R. Co. v. People*, 147 Ill. 234; 35 N. E. 608; *State v. Company*, 24

<sup>6</sup> *State v. P. & N. L. Co.*, 58 Minn. 330; 59 N. W. 1048.

the State where it is incorporated, to an extent necessary to the fullest jurisdiction and visitatorial power of the State and its courts and the efficient exercise thereof in all proper cases, and that a forfeiture may be adjudged for a violation of this common law obligation."<sup>1</sup>

The authorities have on more than one occasion brought actions to forfeit charters of corporations for failure to maintain domiciliary offices therein.<sup>2</sup>

In the words of one court, a corporation "must have some fixed office or place of business in the State where it is incorporated, so that creditors may know where to find it."<sup>3</sup> Again, the object of naming the domicile is to fix the place for the holding of stockholders' and directors' meetings, and to fix a location for the books of the corporation where the stockholders and creditors may demand an inspection thereof, if this right is given to them by statute.<sup>4</sup> Another purpose is to fix the venue of actions brought against a corporation where the law requires that suits shall be brought in the county where the defendant resides. In those States which have statutes expressly authorizing a corporation to transact all of its business outside of the domiciliary State, this provision for a domiciliary office is of the utmost importance.

A corporation cannot have two domiciles at the same time.<sup>5</sup> The domicile, residence, and citizenship of a corporation are in the State from which the charter was procured.<sup>6</sup> The place of residence is in the county where the principal office is located.<sup>7</sup>

The principal office of a corporation and the place for the transaction of its business are not one and the same thing. A corporation may have its office in one locality and transact its business in another.<sup>8</sup>

<sup>1</sup> See also *State ex rel. v. Company*, 45 Wis. 579; *Stickle v. Liberty Cycle Co.* (N. J.), 32 Atl. 708.

<sup>2</sup> See *N. & S. R. Co. v. People*, 147 Ill. 234; 35 N. E. 608; *State v. Company*, 24 Texas, 80; *State v. Company*, 45 Wis. 579; *Simmons v. Company*, 113 N. C. 147; 18 S. E. 117; 22 L. R. A. 677; *State v. Company*, 58 Minn. 330; 59 N. W. 1048; *State v. Company*, 59 Kan. 151; 52 Pac. 422; *Montgomery v. Forbes*, 148 Mass. 249; 19 N. E. 342.

<sup>3</sup> *Kruse v. Dusenbury*, 19 Wk. Dig. (N. Y.) 201.

<sup>4</sup> *State v. Ry. Co.*, 45 Wis. 580.

<sup>5</sup> *Bridge Co. v. Woolley*, 78 Ky. 525.

<sup>6</sup> *American, etc. Co. v. Johnston*, 60 Fed. 503; *Chafee v. Bank*, 71 Me. 514.

<sup>7</sup> *McSherry v. Company*, 97 Cal. 637; 32 Pac. 711.

<sup>8</sup> *Van Etten v. Eaton*, 19 Mich. 187; *Kennett v. Company*, 68 N. H. 432; 39 Atl. 585; *Meredith v. Company*, 59 N. J. Eq. 257; 44 Atl. 55; *Harris v. McGregor*, 29 Cal. 124.

§ 55. **Board of Management.** — A corporation without a responsible management is like a boat without oars, a ship without sails. It must have certain recognized and duly appointed agents to represent the stockholders in the management of the company. These agents are generally known as a board of directors, or less commonly as a board of trustees. Twenty of the States require the names of the first board of directors to be inserted in the certificate of incorporation, while of the remainder nine require merely the number of directors to be stated therein. Twenty-two of the States prescribe residential requirements for directors, while others require that all directors shall be stockholders. The number of directors required by the various business corporation acts vary from an unlimited maximum to a minimum of one.<sup>1</sup>

Where the statute requires the number of directors to be set forth in the articles, the incorporators cannot name a number less than the minimum required by law.<sup>2</sup> The power to have and elect directors is inherent in every corporation, irrespective of statute. In fact, it is an essential feature of corporate existence.<sup>3</sup>

In the absence of express provision in the charter or by-laws the management of the business of the corporation is vested in the Board of Directors and not in the stockholders.<sup>4</sup> Failure to name directors in the articles when the same is required by statute will justify State officials in refusing to file articles.<sup>5</sup> Merely providing for executive officers in the articles is insufficient.<sup>6</sup> The original directors named in the certificate of incorporation under direction of the incorporation act are directors *de jure*, clothed with all the powers of the corporation, and may exercise the same powers as though elected by the stockholders.<sup>7</sup>

§ 56. **Capital Stock.** — Capital stock is the fund of money or other property fixed as the basis for conducting the business of the corporation, and contributed by the corporators to the capi-

<sup>1</sup> See Part III. Table 14, page 584.

<sup>2</sup> *In re Germania Sangerbund*, 12 Penn. Co. Ct. Rep. 89.

<sup>3</sup> *Terwilliger v. Company*, 59 Ill. 249; *Reed v. Company*, 50 Ind. 342; *Hurlbut v. Marshall*, 62 Wis. 590; 22 N. W. 852.

<sup>4</sup> *Dana v. Bank*, 5 W. & S. (Pa.) 247.

<sup>5</sup> *Eakwright v. Company*, 13 Ind. 404; *In re Association*, 19 Penn. Co. Ct. Rep. 25; *People v. Selfredge*, 52 Cal. 331.

<sup>6</sup> *Bates v. Wilson*, 14 Col. 140; 24 Pac. 99.

<sup>7</sup> *Hamilton Trust Co. v. Clemens*, 163 N. Y. 423; 57 N. E. 614.

tal, and is usually represented by shares issued to subscribers to the stock on the initiation of the enterprise.<sup>1</sup> Capital stock from another aspect is the security for creditors of the corporations, and entitles the owners thereof to participate in the management of corporate business and share in its profits and in its surplus after payment of corporate debts.<sup>2</sup> Shares of stock, on the other hand, are simply the muniments and evidence of the holder's title to a given share in the property and franchises of the corporation in which he is a member.<sup>3</sup> Frequently the words "capital" and "capital stock" are used interchangeably to express the property and assets of the corporation.

It is not altogether clear whether express authority to issue shares of capital stock is necessary, yet it has been repeatedly held that in order to increase or reduce the capital stock of a corporation, legislative authority is necessary. The prevailing view seems to be in favor of the necessity of legislative authority.<sup>4</sup>

In the absence of statutory or charter requirements neither subscription for capital stock nor payment thereof is necessary to corporate existence.<sup>5</sup> If the charter of a corporation does not fix the amount of its capital stock, it must be fixed by the stockholders, or, with their consent, by the directors.<sup>6</sup> Stock can be issued only by direction of the corporation.<sup>7</sup>

In many of the Commonwealths the minimum amount of capital stock which a corporation may have is fixed by statute. Very few of the States limit the maximum amount of capitalization.<sup>8</sup> To determine the amount of capital stock that a corporation has, preferred stock must always be included therein.<sup>9</sup> It is not always an easy question to determine who are and who

<sup>1</sup> *Christensen v. Eno*, 106 N. Y. 97; 12 N. E. 648.

<sup>2</sup> *Janney v. Bank*, 98 Ala. 515; 13 So. 761.

<sup>3</sup> *Mechanics' Bank v. Company*, 13 N. Y. 599.

<sup>4</sup> *Cooke v. Marshall*, 191 Pa. St. 315; 43 Atl. 314; 196 Pa. St. 200; 46 Atl. 447; *Detroit Chamber of Commerce v. Gardner*, 109 Mich. 691; 67 N. W. 897.

<sup>5</sup> *McGinty v. Company*, 155 Mass. 183; 29 N. E. 510; *Jefferson Nat. Bank v.*

*Company*, 74 Texas, 421; 2 S. W. 101; *Stowe v. Flagg*, 72 Ill. 397.

<sup>6</sup> *So. K. Ry. Co. v. Cushing*, 45 Me. 524; *State v. Bank*, 95 Tenn. 221; 31 S. W. 993.

<sup>7</sup> *H. D. P. Ass'n v. Stevens*, 34 Neb. 528; 52 N. W. 568; *Hendrix v. Academy of Music*, 73 Ga. 437; *State v. Company*, 41 Ind. 151; *Williams v. Hewitt*, 47 La. Ann. 1076; 17 So. 496.

<sup>8</sup> See Part III. Table 5, page 575. See also *Hughes v. Company*, 34 Md. 316.

<sup>9</sup> *State v. Company*, 16 S. C. 524.

are not stockholders. The question must usually be determined by the particular facts of each case.<sup>1</sup>

Sometimes the incorporation act requires the articles to state the time when and the manner in which stock shall be paid for. It is sufficient in this connection to say, for example, that the stock shall be paid for in cash, and that no certificate of stock shall issue until such payment is made.<sup>2</sup> The statement may be broadened if desired by setting forth in the articles that the stock shall be paid for in property, at such times and of such a character and with such notice to the subscribers as the directors shall deem for the best interests of the corporation.<sup>3</sup>

Where the statute requires the amount of the capital stock to be stated, it has been held sufficient to simply state the number of shares and the par value of the same.<sup>4</sup>

§ 57. **Limitations upon Amount of Capital Stock.** — As has already been observed, the great majority of the incorporation acts provide that the amount of capital stock which the corporation is to have shall be fixed in the articles of incorporation. This is the usual and often the only limitation on the amount of capital stock which any particular corporation is authorized to have. However, in fourteen of the Commonwealths the minimum capital stock of all corporations is fixed by statute, while in three of them the maximum capitalization is also prescribed.<sup>5</sup>

In this connection the words of the court in *Barry v. Merchants Exchange Co.*<sup>6</sup> are peculiarly instructive. In that case Chancellor Sanford observed: "That the capital stock of a corporation is the aggregate amount of the funds of the corporators which are combined together under a charter, for the attainment of some common object of public convenience or private utility. This amount is fixed in the act of incorporation. It is thus limited, in reference to the convenience of the intended corporators, and for the information and security of the public at large. To the corporators it prescribes the amount and the subdivisions of their respective contributions to the com-

<sup>1</sup> See *O'Brien v. Fulkerson*, 75 Mich. 554; 42 N. W. 979.

<sup>2</sup> *N. O. Ry. Co. v. Frank*, 39 La. Ann. 707; 2 So. 310.

<sup>3</sup> See *Baltimore, etc. Telephone Co. v. Company*, 37 La. Ann. 883.

<sup>4</sup> *Buffalo, etc. Ry. Co. v. Hatch*, 20 N. Y. 157.

<sup>5</sup> See Part III. Table 5, page 575.

<sup>6</sup> 1 San. Chan. (N. Y.) 280.



mon fund; the voice which each shall have in the control and management; and the apportionment of the profits of the enterprise. To the community it announces the extent of the means contributed and forming the basis of the dealings of the corporate body, and enables every man to judge of its ability to meet its engagements and perform what it undertakes. And when the statute requires the stock to be paid in before the corporation can transact business, security to those contracting with it is thereby superadded to the information of its resources. These objects for the public benefit are such as the legislature had in view in limiting the amount of capital stock, and requiring a specified sum or proportion to be paid in. One other consideration dictates the amount thus fixed. This is the probable and reasonable extent of the means requisite to the accomplishment of the end proposed, qualified in many cases by the unwillingness of the legislature to create these artificial beings with an undue amount of capital."

§ 58. **Par Value of Capital Stock.**— In thirty-six of the States the par value of the shares of the capital stock may be any amount. In the remainder the par value is limited by statute.<sup>1</sup> Where the corporation act does not require that the number and par value of shares be set forth, the presumption is that the legislature intended that this should be fixed by the stockholders of the corporation at the organization meeting.<sup>2</sup> The matter may be entrusted by the stockholders to the directors if desired.<sup>3</sup>

The question sometimes arises as to whether changing the par value of shares without increasing or decreasing the capital stock constitutes such a "variation" therein as to come within the statutory prohibition forbidding such variation without legislative authority. The prevailing rule seems to be that such variation may be made only by conforming to the statute (if any exists) authorizing amendments to the charter in this regard.<sup>4</sup>

§ 59. **Amount of Stock Subscriptions.**— Unless made so by statute, no subscription, in whole or in part, of the capital stock of a corporation is necessary, either to the validity of a corpora-

<sup>1</sup> See Part III. Table 6, page 576.

<sup>2</sup> S. & K. R. Co. v. Cushing, 45 Me. 524; State v. Bank, 95 Tenn. 221; 31 S. W. 993.

<sup>3</sup> Commonwealth v. Company, 52 Pa. St. 506.

<sup>4</sup> C. C. Ry. Co. v. Allerton, 18 Wall. 233; Seignouret v. Company, 24 Fed. 332.

tion's existence or to its right to transact business.<sup>1</sup> The rule, however, that exists in this country to-day is doubtless opposed to the common law rule on the subject.<sup>2</sup> The States of Washington, Illinois, and Missouri require subscriptions to the full amount of the authorized capital stock.<sup>3</sup>

Fourteen of the Commonwealths require the amount of stock subscribed for by each incorporator to be set forth in the articles, while others require the amount of stock with which the corporation will commence business to be stated. A few prescribe that the amount of stock actually subscribed shall be set forth.<sup>4</sup> Sometimes provisions are found requiring the residences of subscribers to the capital stock to appear in the articles.<sup>5</sup>

Any person capable of contracting may subscribe for stock or become a stockholder. This includes aliens, married women, and corporations.<sup>6</sup> Subscriptions for stock must be made through commissioners where the law so provides.<sup>7</sup> But even where such subscriptions are made through parties other than commissioners contrary to the statute, such subscriptions may be afterwards ratified by the proper party.<sup>8</sup>

Occasionally attempts are made to limit by charter provisions the amount of stock which may be owned by any one stockholder. Such provisions are generally held void, as not called for by the governing statute.<sup>9</sup> An important question that arises in connection with the general subject of stock subscriptions, amount of stock paid in, and amount of capital with which the corporation may begin business, has reference to the effects which follow a failure on the part of the corporation to comply with such statutory requirements. In general, it may be said that the penalties which follow a failure to comply with such provisions are generally along the following lines:

First, they afford a basis for an action to be brought by the State

<sup>1</sup> *Livesey v. Company*, 5 Neb. 50; Cal. 201; *L. O. A. Ry. Co. v. Mason*, 16 Johnson v. Kessler, 76 Ia. 411; 41 N. W. N. Y. 451.

<sup>2</sup> *S. F. N. Bank v. Almy*, 117 Mass. 476; *Minor v. Bank*, 1 Peters (U. S.), 46; 457.

<sup>3</sup> *L. E.* 47; *Schenectady, etc. Plank Road Co. v. Thatcher*, 111 N. Y. 102.

<sup>4</sup> *Schloss v. Company*, 87 Ala. 411; 6 So. 360.

<sup>5</sup> *Denny Hotel Co. v. Schram*, 6 Wash. 134; 32 Pac. 1002.

<sup>6</sup> See *Buffalo, etc. Ry. Co. v. Hatch*, 20 N. Y. 157; *People v. Chambers*, 42

<sup>5</sup> See *Steinmetz v. Company*, 57 Ind.

<sup>6</sup> *Dublin, etc. Ry. Co. v. Black*, L. R. 8 Exch. 181; *Cork, etc. Ry. Co. v. Caze- nove*, L. R. 10 Ad. & El. 935.

<sup>7</sup> *Shurtz v. Company*, 9 Mich. 269.

<sup>8</sup> *Walker v. Company*, 34 Misc. (N. Y.) 245.

<sup>9</sup> *O'Brien v. Cummings*, 13 Mo. Ap. 197.

looking to the forfeiture of the charter. Secondly, they sometimes result in rendering the incorporators liable as co-partners, the courts holding that by failing to comply with the statute they have forfeited their right to immunity from individual liability for what would otherwise be distinctively corporate debts. Thirdly, in some jurisdictions a penalty is prescribed by statute making directors and officers liable for all debts contracted before the statutory requirements above referred to have been complied with.

It goes without saying that corporations cannot legally issue stock in excess of their authorized capitalization.<sup>1</sup> However, this does not mean that *bona fide* purchasers of such shares are without remedy, for ordinarily in such cases both the corporation and its officers are liable.<sup>2</sup>

§ 60. **Amount of Stock paid in.**—It has already been observed that neither the subscription to nor the payment of the whole amount of capital stock authorized by the charter is a condition precedent to the legal existence of the corporation unless it is made so by a governing statute. Ordinarily, it merely goes to the right to transact business, without subjecting the directors or the corporate officers and agents to personal liability.<sup>3</sup> However, in some few of the States the corporation acts provide that before the corporation may commence business a certain percentage of the capital stock shall be paid in.<sup>4</sup> Where the articles fail to so set forth the amount of stock paid in as required by statutes, this does not affect *ipso facto* the legality of the corporation's existence, but it is a matter which can only be taken advantage of by the State in *quo warranto* proceedings.<sup>5</sup>

Statutory payments must be made in the manner and time provided by statute, and they must be paid in in good faith.<sup>6</sup>

<sup>1</sup> *Mechanics' Bank v. Company*, 13 N. Y. 599; *Scovill v. Thayer*, 105 U. S. 143. *Music*, 73 Ga. 437; *K. C. H. Co. v. Hunt*, 57 Mo. 126; *Tradesmen Publishing Co. v. Company*, 95 Tenn. 634; 32 S. W. 1097;

<sup>2</sup> *N. Y. N. H. R. Co. v. Schuyler*, 34 N. Y. 30; *Moores v. Bank*, 111 U. S. 156; 4 S. Ct. 345. *Ag. Bank v. Burr*, 24 Me. 256; *Y. R. L. N. Co. v. Company*, 72 Fed. 62.

<sup>3</sup> *D. S., etc. Co. v. Attorney-General*, 21 Can. Sup. Ct. 72; *S. P. R. Co. v. Thatcher*, 11 N. Y. 102. <sup>6</sup> *McLaren v. Pennington*, 1 Paige (N. Y.), 102; *People v. Chambers*, 42 Cal. 201; *State v. Company*, 3 Hump. (Tenn.) 305; *People v. City Bank*, 7 Col. 226; 3 Pac. 214; *People v. Bank*, 129 Ill. 618; 22 N. E. 288; *Hammond v. Strauss*, 53 Md. 1.

<sup>4</sup> See Part III. Table 6, page 576.

<sup>5</sup> *E. P. R. Co. v. Vaughan*, 14 N. Y. 546. See also *Hendrix v. Academy of*

Failure to state, in the affidavit relative to the amount of stock paid in, that such payments had been made in good faith to the directors is not fatal, as the *bona fides* of the transaction will be implied.<sup>1</sup>

§ 61. **Amount of Stock with which a Corporation may begin Business.** — Some few of the States require that the amount of capital with which a corporation will begin business shall be set forth in the articles. In some cases, as in New Jersey and New York, the minimum amount is prescribed by statute. The failure, however, to actually pay in the prescribed amount of capital stated in the articles will not operate to destroy the corporate existence.<sup>2</sup>

§ 62. **Duration of Corporate Existence.** — At one time there was a tendency on the part of the States to limit the duration of corporate existence of corporations to a definite period in the supposed interest of the public.<sup>3</sup> At the present time in twenty-six of the Commonwealths perpetual charters may be procured under the business corporation acts in force therein. In the remaining States the periods vary from one hundred years to twenty.<sup>4</sup> Even in these States provision is made for extension of corporate existence by complying with the statute in such case made and provided.<sup>5</sup>

The phrase "perpetual succession" has been held not to be equivalent to perpetual existence.<sup>6</sup> The naming of a period of corporate existence in the charter in excess of that permitted by law will not render the charter void, but the corporate existence will not be continued beyond the statutory period.<sup>7</sup>

It is scarcely necessary to say that the continuance of active corporate existence during the entire period limited by the charter is not binding upon the corporation.<sup>8</sup> A difficult question often arises when the corporation attempts to continue its active business as a corporation and to perform its corporate

<sup>1</sup> Buffalo, etc. Ry. Co. v. Hatch, 20 N. Y. 157.

<sup>5</sup> See *post*, sec. 120.

<sup>2</sup> Staunton Copper Mining Co. v. Thurmond, 7 Mo. Ap. 587; Hammond v. Strauss, 53 Md. 1; State v. Webb, 97 Ala. 111; 12 So. 377.

<sup>6</sup> Fairchild v. Association, 71 Mo. 526; 468; 31 S. W. 797.

<sup>3</sup> Smith v. Company, 58 N. J. Eq. 331; 43 Atl. 567; State *ex rel.* Walker v. Payne, 129 Mo. 468; 31 S. W. 797.

<sup>7</sup> People v. Cheeseman, 7 Col. 376; 3 Pac. 716; Hughes v. Company, 34 Md. 316. See also Buffalo, etc. Ry. Co. v. Hatch, 20 N. Y. 157.

<sup>4</sup> See Part III. Table 13, page 583.

<sup>8</sup> Cronin v. Company *et al.*, 29 Wk. L. Bul. (Ohio) 52.

functions after the expiration of its charter. Ordinarily this is a matter which concerns the State alone.<sup>1</sup> Under such circumstances, in order to protect third parties, the courts recognize such corporations as corporations *de facto* on the ground that there is clearly authority for their attempting to act as corporations.<sup>2</sup> Many courts of high authority have held that a corporation is dissolved and ceases to exist when its charter expires.<sup>3</sup> In many States there are statutes permitting corporations to exist as such for certain purposes after the expiration of their charter.<sup>4</sup> The purpose of such statutes is to grant to the corporation time to close up its corporate affairs. It has been held that the object of such statutes is not to limit but to enlarge corporate privileges so that the corporation may continue active business throughout the whole charter period.<sup>5</sup>

§ 63. **Date of Annual Meeting.**—In Alaska, Arizona, Delaware, Iowa, Minnesota, Nebraska, and Utah the corporation acts require that the date of the annual meeting of the corporation be inserted in the articles. Such provisions are to be regarded as directory rather than mandatory, and their legal effect is essentially the same as if such provision was merely made in a valid by-law of the corporation. In Arkansas, Louisiana, and Tennessee the date of the organization meeting must appear in the certificate of incorporation.<sup>6</sup> Even when the statute requires that the directors shall be chosen at the annual meeting, this has no reference to the election of the first board at the organization meeting.<sup>7</sup>

§ 64. **Limitation upon Corporate Indebtedness.**—In the absence of constitutional or statutory provision, there are no limitations imposed upon corporations with respect to the amount of indebtedness which they may incur.<sup>8</sup> The whole extent of corporate credit is measured and controlled by its capital. The laws of trade have placed more efficient barriers than the State

<sup>1</sup> Bushnell v. Company, 138 Ill. 67; 27 N. E. 596.

<sup>2</sup> Miller v. Company, 31 W. Va. 836; 8 S. E. 600.

<sup>3</sup> Bradley v. Reppell, 133 Mo. 545; 32 S. W. 645; Sturges v. Vanderbilt, 73 N. Y. 384.

<sup>4</sup> See Part III. Table 17, page 587.

<sup>5</sup> Berwick v. Company, 39 Mich. 701.

<sup>6</sup> Hughes v. Parker, 20 N. H. 58; Beardsley v. Johnson, 121 N. Y. 224; 24 N. E. 380.

<sup>7</sup> B. A. M. Co. v. Moring, 15 Gray (Mass.), 211.

<sup>8</sup> Barry v. Company, 1 San. Chan. (N. Y.) 280, 310.

legislatures to the power of corporate borrowing. In Alaska, Arizona, Florida, Iowa, Minnesota, and Nebraska, the incorporation acts require that the maximum amount of indebtedness which the corporation may incur shall be set forth in the articles of incorporation.

In twenty-two of the Commonwealths statutes, either expressly or by implication, prescribe the amount of indebtedness which corporations may incur.<sup>1</sup>

When the phrase "implied limitation upon corporate indebtedness" is used, reference is had to that not uncommon form of limitation where directors or stockholders are made liable for corporate debts in case the corporate indebtedness exceeds a certain definite amount.<sup>2</sup>

§ 65. **Exemption of Stockholders from Personal Liability.** — While there is no common-law liability imposed upon stockholders for corporate debts, nevertheless parties may lawfully contract to any extent they see fit as to their own personal liability for such indebtedness.<sup>3</sup>

In order that stockholders may avoid personal liability for corporate debts it is necessary in Arizona, Delaware, Iowa, Kentucky, Louisiana, Mississippi, Nebraska, and Utah, to insert provisions in the certificates of incorporation expressly exempting stockholders from such liability.

§ 66. **Adoption of By-Laws by Directors.** — In a large number of the States and Territories the incorporation acts expressly provide for delegation of power to directors to make, alter, or repeal by-laws.<sup>4</sup> In many of the States in order that the corporation may have this power it is necessary to insert provision therefor in the charter.<sup>5</sup> Unless the power to make, alter, or repeal by-laws is thus delegated to the board of directors, it can only be exercised by the stockholders.<sup>6</sup>

<sup>1</sup> See Part III, Table 12, page 582. See also *Commonwealth v. Company*, 129 Pa. St. 405; 18 Atl. 414; *O. H. Mfg. Co. v. Canney*, 54 N. H. 295; *Thornton v. Balcom*, 85 Ia. 198; 52 N. W. 190; *Heuer v. Carmichael*, 82 Ia. 288; 47 N. W. 1034.

<sup>2</sup> See *Tallmadge v. Company*, 4 Barb. (N. Y.) 382; *Allison v. Company*, 87 Tenn. 60; 9 S. W. 226; *Sweeney v. Talcott*, 85 Ia. 103; 52 N. W. 106; *Gunther v. Company*, 107 Ky. 44; 52 S. W. 931.

<sup>3</sup> *London, etc. Bank v. Parrott*, 125 Cal. 472; 58 Pac. 164; *Lillard v. Company*, 14 Tex. Civ. Ap. 67; 36 S. W. 792; *Tidioute Sav. Bank v. Libbey*, 101 Wis. 193; 77 N. W. 182.

<sup>4</sup> See Part III, Table 12, page 582.

<sup>5</sup> *Cahill v. Company*, 2 Doug. (Mich.) 128; *Heintzelman v. Association*, 38 Minn. 138; 36 N. W. 100; *Bank of Holly Springs v. Pinson*, 58 Miss. 421.

<sup>6</sup> *Morton Gravel Road v. Wysong*, 51

§ 67. **Provisions for the Regulation of the Internal Affairs of the Corporation.**—In a number of the States statutory authority is to be found for inserting in the articles of incorporation any provisions that may be desired relative to the regulation of the business, and for the conduct of the affairs of the corporation, creating, defining, and limiting the powers of the corporation, the officers, and the stockholders.<sup>1</sup> Under such authority the clauses which are usually inserted are the following: giving the directors power to sell all the business of the corporation as an entirety; the power to sell entire corporate property at the request of a majority of the stockholders; giving the right to directors to make and alter by-laws; giving the power to directors to borrow money upon bond and mortgage without authority therefor being first given by the stockholders; power to appoint additional vice-presidents and assistant secretaries and treasurers; to declare dividends; to reserve and fix working capital; to appoint an executive committee from the board of directors; giving stockholders power to remove directors; giving power to create a lien upon stock for indebtedness due company from stockholders; provision for the examination of books by the stockholders, and in connection therewith power to insert private publicity clause; to provide for cumulative voting and limiting the power to vote; reservation of power to change provisions in the articles of incorporation; power to create preferred stock.

§ 68. **Miscellaneous Provisions Relative to Contents of Articles of Incorporation.**—It would be impossible to enumerate all the peculiar provisions under the several business corporation acts which exist in the various States. Among those not already referred to are the following: Statement of the amount of stock subscribed for by the incorporators; a list of all parties who have subscribed for stock as preliminary to incorporation.<sup>2</sup>

In setting forth the subscribers to the capital stock it is sufficient to use above the first name the words "names,"

Ind. 4; N. M. T. S. Co. v. Bishop, 103 Wis. 492; 79 N. W. 785; *In re A. A. Griffing Iron Co.*, 63 N. J. Law, 168, 357; 41 Atl. 931; 46 Atl. 1097.

<sup>1</sup> See Part III. Table 10, page 580.

<sup>2</sup> *Chester Glass Co. v. Dewey*, 16 Mass. 94; *C. V. & P. Co. v. Secretary of State*, 128 Mich. 62; 87 N. W. 901; *J. N. Bank v. Company*, 74 Tex. 421; 12 S. W. 110.

“residences,” “shares,” and then immediately follow the same with the names of the subscribers to the capital stock.<sup>1</sup> Among other provisions are those requiring the naming of an agent upon whom service of process upon the corporation may be served;<sup>2</sup> another, a statement of the manner of conducting the business of the corporation.<sup>3</sup> A number of the States require the names and residences of the incorporators to be set forth in the articles.<sup>4</sup> Sometimes it is necessary to secure the approval of the Attorney-General to the form and contents of the articles.<sup>5</sup>

§ 69. **Construction of Charter.**— Under the liberal provisions of the modern incorporation acts, the articles drawn thereunder necessarily assume, by the sole action of the incorporators, numerous powers, many of which have been heretofore of a public character, affecting the interests of the public very largely and very seriously. The Supreme Court of the United States has taken the view that, for the reasons just given, these articles do not commend themselves to the judicial mind as a class of instruments requiring or justifying any very liberal construction. That court has said in this connection, that where the question is whether they conform to the authority given by statute in regard to corporate organization, it is always to be determined upon a just construction of the power granted to them with a due regard for all other laws of the State upon that subject.<sup>6</sup>

In construing charters the following rules seem to govern the courts: First, the intention of the legislature must be given due weight.<sup>7</sup> Second, due consideration must be given to the policy of the State with reference to such matters as evidenced by the character of legislation. Third, all ambiguities in the terms of the articles of incorporation must be construed against the corporation in favor of the public.<sup>8</sup> Fourth, words should be given their ordinary meaning.<sup>9</sup> Fifth, the construction given

<sup>1</sup> *Vawter v. Franklin College*, 53 Ind. 88.

<sup>2</sup> *Johnson v. Masons' Lodge*, 21 Ky. L. R. 493; 51 S. W. 620.

<sup>3</sup> *State v. Association*, 29 O. St. 399.

<sup>4</sup> *Steinmetz v. Company*, 57 Ind. 457; *State v. Foulkes*, 94 Ind. 493.

<sup>5</sup> See *Field v. Cooks*, 16 La. Ann. 598. 153.

<sup>6</sup> *Or. Ry. Co. v. Or. Ry. Co.*, 130 U. S. 1; 9 S. Ct. 409.

<sup>7</sup> *Union Nat. Bank v. Matthews*, 98 U. S. 621.

<sup>8</sup> *A. L. & T. Co. v. Company*, 157 Ill. 641; 42 N. E. 153.

<sup>9</sup> *Riker v. Leo*, 133 N. Y. 519; 30 N. E.



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the charter must always be reasonable.<sup>1</sup> Sixth, where the language of the certificate as to corporate purposes and powers permits of two constructions, that the more favorable to the State is to be adopted.<sup>2</sup>

<sup>1</sup> *Black v. Company*, 22 N. J. Eq. 130; <sup>2</sup> *Bridge Co. v. Ferry Co.*, 29 Conn. Wheeler, etc. Co. v. Company, 14 Wash. 221. 630; 45 Pac. 316; *Nat. Bank v. Company*, 41 O. St. 1.

## CHAPTER II.

## PROCURING THE CHARTER.

§ 70. *Signing the Articles.*— With but few exceptions the business corporation acts of the various Commonwealths provide that the articles shall be signed by the incorporators.<sup>1</sup> It is not requisite to the validity of such articles that they be signed within the State from which the charter is procured.<sup>2</sup> The articles may be drawn on separate sheets, the last one of which only need be signed by the incorporators.<sup>3</sup> If the incorporator is unable to write he may sign the articles by his mark.<sup>4</sup> The full name need not be signed.<sup>5</sup>

If seals are required by statute they must be used.<sup>6</sup> The use of a power of attorney to sign articles would probably not be sanctioned where the statute calls for additional matters which are necessarily personal in their nature.<sup>7</sup>

§ 71. *Acknowledgment of Execution of Articles.*— With some few exceptions, the incorporation acts of all the States require that the articles of incorporation shall be acknowledged by the incorporators, before some officer authorized by law to take acknowledgments of deeds. There must in all cases be a proper number of acknowledgments.<sup>8</sup> Where the statutes designate some particular officer to take the acknowledgment, the charter is voidable if taken before any other official.<sup>9</sup> A failure, on the part of the officer taking the acknowledgment, to certify that the

<sup>1</sup> *State v. Critchett*, 37 Minn. 13; 32 N. W. 787; *People v. Company*, 97 Cal. 276; 32 Pac. 236; *Hughes v. Company*, 34 Md. 316; *W. B. & L. Ass'n v. Coleman*, 89 Pa. St. 428.

<sup>2</sup> *Humphreys v. Mooney*, 5 Col. 282.

<sup>3</sup> See *L. O. A. & N. Ry. Co. v. Mason*, 16 N. Y. 451.

<sup>4</sup> *Trustee, etc. v. Campbell*, 46 La. Ann. 1543; 21 So. 184.

<sup>5</sup> *State v. Beck*, 81 Ind. 500.

<sup>6</sup> *Griffen v. Company*, Fed. Cases, No. 5816; *Warner v. Callender*, 20 O. St. 190.

<sup>7</sup> *In re Charter Acknowledgment*, 28 Pa. Co. Ct. Rep. 187.

<sup>8</sup> *People v. Company*, 97 Cal. 276; 32 Pac. 236; *Hughes v. Company*, 34 Md. 316; *Doyle v. Mizner*, 42 Mich. 332; 3 N. W. 968; *Kaiser v. Bank*, 56 Ia. 104; 8 N. W. 772; *State v. Critchett*, 37 Minn. 13; 32 N. W. 787.

<sup>9</sup> *Shields v. Company*, 94 Tenn. 123, 28 S. W. 668; *State v. Lee*, 21 O. St. 662; *Simmings v. Association*, 26 O. St. 483.

incorporators were personally known to him will not invalidate the incorporation proceedings.<sup>1</sup>

Even where the statutes require the organization meetings to be held within the domiciliary State, it is not necessary that the articles be signed and acknowledged therein.<sup>2</sup>

The omission of immaterial parts of the acknowledgment does not operate to render the incorporators liable as partners.<sup>3</sup> In order to entitle articles to be filed with the proper State official, they must be signed and acknowledged in all respects as required by law.<sup>4</sup>

§ 72. **Publication of Articles.**—In ten of the Commonwealths the law requires that either the petition for a charter or the charter itself or the substance thereof shall be published for a prescribed length of time.<sup>5</sup> The original theory upon which such requirements are based appears to have been that the creation of a corporation should be attended with all possible publicity, in order that all the world might acquaint itself with the fact that it is dealing with a corporation and not with a natural person.<sup>6</sup> At the present time the legislatures seem to proceed on the basis of furnishing the newspapers with additional paid matter on the theory that they need it in their business. However that may be, it still remains true that the statutes governing publication of articles must be substantially complied with, otherwise the charter may be declared void at the instance of the State.<sup>7</sup>

Sometimes due publication of articles carries with it immunity from personal liability.<sup>8</sup>

It has been held that the publication of more than the law requires will not invalidate the legality of the publication.<sup>9</sup>

<sup>1</sup> *People v. Cheeseman*, 7 Col. 376; *Bigelow v. Gregory*, 73 Ill. 197; *Field v. 3 Pac.* 716. See also *Boston Acid Mfg. Co. v. Moring*, 15 Gray (Mass.), 211.

<sup>2</sup> *Humphreys v. Mooney*, 5 Col. 282.

<sup>3</sup> *Stout v. Zulick*, 48 N. J. L. 599; 7 Atl. 362.

<sup>4</sup> *Doyle v. Mizner*, 42 Mich. 332; 3 N. W. 968; *Montgomery v. Forbes*, 148 Mass. 249; 19 N. E. 342.

<sup>5</sup> See Part III Table 7, page 577.

<sup>6</sup> See *In re Church, etc.*, 14 Phil. 121; *Seaton v. Grimm*, 110 Ia. 145; 81 N. W. 225.

<sup>7</sup> *Clegg v. Company*, 61 Ia. 121; 15 N. W. 865; *Thornton v. Balcom*, 85 Ia. 198;

*Bigelow v. Gregory*, 73 Ill. 197; *Field v. Cooks*, 16 La. Ann. 153; *Hunt v. Salisbury*, 55 Mo. 310; *Indianapolis Min. Co. v. Herkimer*, 46 Ind. 142; *Holmes v. Gilliland*, 41 Barb. 568; *Davenport Nat. Bank v. Davis*, 43 Ia. 424; 15 N. W. 865.

<sup>8</sup> *Davenport Nat. Bank v. Davis*, 43 Ia. 424; 15 N. W. 865. See, however, *Clark v. Richardson*, 17 Ky. Law Rep. 514; 31 S. W. 878; *Wing v. Slater*, 19 R. I. 597; 35 Atl. 302; *Heinig v. Company*, 81 Ky. 300; 5 Ky. Law Rep. 281.

<sup>9</sup> *In re Sowego Water Co.*, 38 W. N. C. (Pa.) 148.

§ 73. **Affidavit as to Stock Subscriptions.** — The laws of Florida, Georgia, Illinois, Kansas, Michigan, Missouri, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, and West Virginia require in addition to the ordinary acknowledgment of the execution of the articles, that the same be accompanied by an affidavit showing that the amount of stock required by law as a preliminary to doing business as a corporation has been duly subscribed.<sup>1</sup> The same matter appears in the certificate of organization required in Arkansas, Connecticut, Indian Territory, Maine, and Virginia.

On the other hand, the incorporation acts of Alabama, California, Delaware, Idaho, Kentucky, Nevada, New Jersey, New York, North Carolina, Ohio, Virginia, and Washington merely require that the amount of stock subscriptions be set forth in the articles.

As to the content of the affidavits as to stock subscriptions, it is sufficient if they serve to show clearly that the statute relative to the same has been substantially complied with.<sup>2</sup>

Unless the statute designates some officer before whom such affidavit be sworn to, it may be made before any officer authorized to administer oaths and to certify to the same.<sup>3</sup>

§ 74. **Anti-Trust Affidavit.** — Some few of the States — such, for example, as South Dakota, Missouri, and Illinois — require either of the incorporators before organization or of certain designated officers of the corporation after organization that they certify and make oath to the effect that the corporation is organized for the transaction of a lawful business and not for the purpose of enabling the corporation to violate the provision of the anti-trust act in force in that particular Commonwealth. Just what practical purpose the requirements here referred to serve, it would be difficult to say. In its practical operation it is usually a mere formality, and has, so far as observation goes, seldom served any useful purpose.<sup>4</sup>

§ 75. **Special Requirements in Particular States.** — Owing to the varied requirements existing in the several States and Territories relative to the steps necessary to procure charters under

<sup>1</sup> *People v. Company*, 45 Cal. 306.

<sup>2</sup> *People v. Company*, 45 Cal. 306; *B. & P. Ry. Co. v. Hatch*, 20 N. Y. 157.

<sup>3</sup> *Wood v. Bank*, 9 Cowen, 194.

<sup>4</sup> See *Ohio St. Ry. Co. v. State*, 49

O. St. 668; 32 N. E. 933; *People v. Company*, 121 N. Y. 582; 24 N. E. 834; *State v. Standard Oil Co.*, 49 O. St. 137; 30 N. E. 279.

the laws thereof, it will be impossible to do more than merely refer to a few of these requirements not already discussed. Under the statutes of some of the States it is necessary before a charter can issue that the capital stock either be subscribed for in whole or in part.<sup>1</sup> In others it is necessary that all or part of the authorized capital stock be actually paid in.<sup>2</sup> However, in many of the States it is not necessary that the capital stock be subscribed for as a condition precedent to corporate existence.<sup>3</sup> Some of the States require that the certificate shall show the amount of the capital stock, the amount actually paid in, and that it shall give the names and residences of the shareholders, and the amount of stock which each has subscribed. Where such provisions exist substantial compliance therewith is essential to the creation of a *de jure* corporation.<sup>4</sup>

Sometimes incorporation acts require that the certificate shall state the maximum amount of indebtedness which the corporation is authorized to incur.<sup>5</sup> In Indiana the articles must contain an impression or description of the seal.<sup>6</sup> In Georgia charters are issued by the courts upon petition therefor. Here as well as in other cases the statute governing the matter must be substantially complied with.<sup>7</sup>

In some States the law requires that the certificate shall set forth the name and location of the principal place of business of the corporation. Such provision must be substantially complied with.<sup>8</sup>

In Pennsylvania, where the incorporation act required the application for a charter to show the place of business of the proposed corporation, and the application merely stated location of its office, it was held insufficient. This for the reason that a corporation may have its office in one place and its place of business in another.<sup>9</sup>

**§ 76. Powers of State Officials Relative to Accepting or Rejecting Articles.** — Where the statute either expressly or by implica-

<sup>1</sup> *J. C. G. Company v. Dwight*, 29 N. J. Eq. 246; *Boyd v. Company*, 90 Pa. St. 169.

<sup>2</sup> *People v. Chambers*, 42 Cal. 201.

<sup>3</sup> See *ante*, sec. 2.

<sup>4</sup> *Hendrix v. Academy*, 73 Ga. 437; *Bolling v. Le Grand*, 87 Ala. 482; 6 Sou. 332.

<sup>5</sup> *Sweeney v. Talcott*, 85 Ia. 103; 52 N. W. 106.

<sup>6</sup> See *Vawter v. Franklin College*, 53 Ind. 88.

<sup>7</sup> *Van Pelt v. Association*, 79 Ga. 439; 4 S. E. 501; *In re Deveaux*, 54 Ga. 637.

<sup>8</sup> *Montgomery v. Forbes*, 148 Mass. 249; 19 N. E. 342; *Ex parte Spring Valley Works*, 17 Cal. 132.

<sup>9</sup> *In re Enterprise Mutual Benefit Ass'n*, 10 Pa. 380.

tion bestows upon State officials the duty of examining articles of incorporation and passing upon their legal sufficiency and authorizes State officials to certify that the incorporators have become a corporation, then the issue of such certificate becomes an adjudication that the corporation has been duly formed until the State has vacated the charter by proper proceedings taken in the courts.<sup>1</sup> Usually this duty is bestowed upon the State department which is a branch of the executive, and cannot therefore pass upon questions which are purely judicial.<sup>2</sup> It is confined to an examination as to whether the purposes of the proposed corporation are legal on their face and whether conditions precedent have been complied with so that a charter should properly issue.<sup>3</sup>

The main points to which State officials should address themselves in passing upon corporation papers presented to them are as follows: (1) Have the requisite number of incorporators signed the articles of incorporation? (2) Have the articles been properly acknowledged by the incorporators? (3) Is the corporate name mentioned in the articles one that can be lawfully used by the proposed corporation? (4) Have the statutory requirements relative to the contents of the articles of incorporation been substantially complied with?<sup>4</sup>

Generally speaking, permission to file charters may be refused upon the following grounds: If the name of the proposed corporation is identical or closely resembles that of an existing corporation, the State officials may exercise their discretion and refuse to pass the charter.<sup>5</sup>

It has been held, however, by a court of excellent authority that a statute prohibiting the corporation from assuming a name in use by any other organization or so closely analogous to it as to mislead the public is designed to protect domestic corporations.<sup>6</sup>

<sup>1</sup> *Boyce v. M. E. Church*, 46 Md. 359; *Charter St. L. Ass'n*, 19 Pa. County Ct. Rep. 25; *In re Duquesne College Charter*, 12 Pa. County Ct. Rep. 491;

<sup>2</sup> *Granby Co. v. Richards*, 95 Mo. 106; 8 S. W. 246; *Van Pelt v. Gardner*, 54 Neb. 701; 75 N. W. 874. *Woodberry v. McClurg*, 78 Miss. 831; 29 Sou. 514.

<sup>3</sup> *P. R. T. Rd. Co. Charter Application*, 20 Pa. County Ct. Rep. 151; *N. M. G. T. Co. v. N. G. T. Co.*, 21 Pa. County Ct. Rep. 393; *People v. Company*, 130 Ill. 268; 22 N. E. 798. <sup>5</sup> *State v. McGrath*, 92 Mo. 355; 5 S. W. 29; *American Clay Mfg. Co. v. American Clay Mfg. Co.*, 198 Pa. St. 189; 47 Atl. 936; *People v. Payne*, 161 N. Y. 229; 55 N. E. 849.

<sup>4</sup> *State v. National Inv. Co.*, 88 Wis. 512; *In re Application for Charter*, 5 Pa. Dis. Rep. 243; *In re Application for* <sup>6</sup> *People v. H. L. A. Co.*, 111 Mich. 405; 69 N. W. 653.

Generally speaking, the action of the Secretary of State in issuing a license or certificate of incorporation is ministerial.<sup>1</sup> Neither State officials nor the courts can with respect to incorporation add new conditions to those prescribed by statute.<sup>2</sup> Generally, the test of the extent of powers of ministerial offices is the right to compel performance by mandamus.<sup>3</sup>

It is an almost universal rule that after the certificate is once issued, the officer who issues it has no power to revoke the certificate. For this purpose application must ordinarily be made to the courts.<sup>4</sup>

§ 77. **Right to Mandamus State Officials for refusing to file Articles.**—Ordinarily mandamus is the proper remedy where State officials refuse to file a certificate of incorporation, provided the duty of receiving and filing the same is lodged with them.<sup>5</sup>

§ 78. **Organization Tax.**—By the term “organization tax,” as here used, is to be understood the amount of money exacted by the State from individuals in return for a grant from the former to the latter of the right or privilege of being a corporation; that is, of doing business in a corporate capacity and under the privilege or franchise which when incorporated the company may exercise. The right or privilege to be a corporation or to do business as such body is one generally deemed of value to the corporation, which is the right or privilege by which several individuals may unite themselves under a common name and act as a single person with a succession of members without dissolution or suspension of business and with a limited individual liability. The grant of such a right or privilege rests entirely in the discretion of the State, and may unquestionably be accompanied with such conditions as the legislature thereof may judge most befitting to its interests and policy.

Thus the latter may require of the incorporators, as a condition to the original grant of the franchise as well as of its continued exercise, that the corporation pay a specific sum to the State.<sup>6</sup>

<sup>1</sup> *People v. C. G. T. Co.*, 130 Ill. 269; 22 N. E. 798.

<sup>2</sup> *Hastings v. A. P. Co.*, 29 Wash. 224; 69 Pac. 776.

<sup>3</sup> *F. B. Co. v. Wood*, 14 Ga. 80.

<sup>4</sup> See, however, *I. W. C. Co. v. Pearson*, 140 Ill. 423; 31 N. E. 400; *In re N. I. E. Co.*, 142 Pa. St. 450; 21 Atl. 879.

<sup>5</sup> *People ex rel. N. Y. P. Co. v. Rice*, 128 N. Y. 59, 28 N. E. 251; *H. W. I. Co. v. N. Y. H. I. Co.*, 140 N. Y. 94; 35 N. E. 417; *State v. Taylor*, 55 O. St. 61, 44 N. E. 513; *State v. McGrath*, 92 Mo. 355; 5 S. W. 29; *Illinois Watch Case Co. v. Pearson*, 140 Ill. 423; 31 N. E. 400.

<sup>6</sup> *Home Insurance Co. v. People of the*

There are two broad grounds for sustaining the power of the State to impose organization taxes. The first of these is their inherent power to regulate corporations. Corporate capacity itself is a franchise. No persons can make themselves a body corporate and politic without legislative authority.<sup>1</sup> The other ground referred to is the inherent power of the State to enact such legislation as may be necessary in order to raise revenue for State purposes.<sup>2</sup>

The term "organization tax" should be carefully distinguished from the phrase "franchise tax;" the latter referring to the tax imposed by the State upon corporations for the privilege of doing business in a corporate capacity after incorporation. All of the States and Territories with the exception of Arizona, Arkansas, District of Columbia, Georgia, Indian Territory, Louisiana, and Oklahoma, impose graduated organization taxes upon corporations organized under their laws. There can be no question as to the validity of such graduated taxation.<sup>3</sup> The same is true even when in such matters the legislature distinguishes, as is the case in West Virginia and New Hampshire, between resident and non-resident domestic corporations.<sup>4</sup>

At the present time it is a rule of almost universal application that the payment of an organization tax is a condition precedent to corporate existence.<sup>5</sup> Organization taxes cannot be evaded on the ground that the corporation calls itself an "eleemosynary" corporation when in fact it is otherwise.<sup>6</sup>

The State is not bound to permit corporations to consolidate or to extend their corporate existence, and for this reason it may lawfully impose the payment of an organization tax as a condition precedent to consolidation or to the extension of its corporate existence.<sup>7</sup>

State of New York, 134 U. S. 594; 10 S. Ct. 593; 33 L. E. 1025; *Gordon v. Appeal Tax Court*, 44 U. S. (3 How.) 133; 11 Law Ed. 529; *B. & O. Ry. Co. v. Maryland*, 88 U. S. (21 Wall.) 456; 22 L. E. 678; *People v. Rose*, 210 Ill. 582; 71 N. E. 580.

<sup>1</sup> *California v. Company*, 127 U. S. 1; 8 S. Ct. 1073; 32 L. E. 157.

<sup>2</sup> *Baker v. Cincinnati*, 11 O. St. 534; *W. U. T. Co. v. Attorney-General*, 125 U. S. 530; 8 S. Ct. 961; 31 L. E. 790.

<sup>3</sup> See *Ashley v. Ryan*, 49 O. St. 504; 31 N. E. 721; 153 U. S. 436; 14 S. Ct. 865; 38 L. E. 773.

<sup>4</sup> *B. J. C. C. Co. v. Scherr*, 50 W. Va. 533; 40 S. E. 514.

<sup>5</sup> *Union Horseshoe Works v. Lewis*, 1 Abb. (U. S.) 518; *Fed. Cases*, No. 14383; *Combined Saw & Planer Co. v. Flournoy*, 88 Va. 1029; 14 S. E. 976; *Edwards v. Denver & R. G. R. Co.*, 13 Col. 59; 21 Pac. 1611; *State v. Rotwitt*, 17 Mont. 41; 41 Pac. 1004; *Ashley v. Ryan*, 49 O. St. 504; 31 N. E. 721; *H. M. Co. v. Bremer*, 12 R. I. 491.

<sup>6</sup> *State v. Lesueur*, 99 Mo. 552; 13 S. W. 237.

<sup>7</sup> *Ashley v. Ryan*, 49 O. St. 504; 31 N. E. 721; 153 U. S. 436; 14 S. Ct.



§ 79. **Form in which Charter is granted.**— In only twenty-nine of the States do the corporation acts expressly provide for the issuance of a certificate of incorporation or charter by State officials. In some few of the remainder the power to issue such instruments is assumed by the officers having the matter in charge without any express authorization therefor in the statute. In the remaining States proof of incorporation is usually had by procuring certified copies of the articles of incorporation. The matter becomes one of practical importance in connection with the right of third parties to collaterally attack not only the corporate existence but the corporate purposes and powers as well. This matter has already been discussed at length in a previous section.<sup>1</sup>

Ordinarily the commencement of corporate existence dates from the time when the certificate of incorporation is issued. Where the statute expressly provides for the issuance of a charter by State officials the latter have no discretion in the matter, and must issue the same upon demand of the parties who have legally entitled themselves to the same.<sup>2</sup> The certificate must be issued immediately, and must be in the form, if any, prescribed by the statute.<sup>3</sup> The Secretary of State should always affix his seal to the certificate of incorporation.<sup>4</sup>

§ 80. **Filing and Recording in Local County Offices.**— Generally speaking, it is part of the plan adopted by the various legislatures in the enactment of general incorporation acts, to provide in addition to requiring that articles of incorporation be filed with some designated State official, that they always be filed in one or more local county offices.<sup>5</sup> Usually the latter requirement is confined to the provision that they be filed in the county where the corporation's domiciliary office is located. However, in some few of the States such articles must be filed in every county wherein the corporation transacts its business or holds real property. In some of the States, such as California and Maryland, more importance appears to be attached to the filing of the articles in the local county office than with State officials.<sup>6</sup>

865; 38 L. E. 773; *People v. Pfister*, 57 Cal. 532.

<sup>1</sup> See *ante*, § 6.

<sup>2</sup> *State v. Taylor*, 55 O. St. 61; 44 N. E. 513; *Sparks v. Company*, 87 Ala. 294; 6 So. 195.

<sup>3</sup> *Stowe v. Flagg*, 72 Ill. 397; R. F. 14 Cal. 434.

*Ass'n v. Clarke*, 61 Me. 351; *Sparks v. Company*, 87 Ala. 294; 6 So. 195; *People v. Pavn*, 161 N. Y. 229; 55 N. E. 849.

<sup>4</sup> *Benner v. State*, 7 Lea (Tenn.), 682.

<sup>5</sup> See Part III. Table 4, page 574.

<sup>6</sup> See *N. H. C. & M. Co. v. Woodberry*,

The purpose of filing articles in county offices has been said to be in order that persons dealing with the corporation may have an easy and public inspection of the basis of its corporate organization.<sup>1</sup> With some few exceptions corporate existence is not made to depend upon the filing of the articles in the local county offices. In any event, where such filing is not had, the corporation is treated as a corporation *de facto*, if not *de jure*.<sup>2</sup> The foregoing is certainly true in the absence of any proceedings by the State in the nature of *quo warranto*.<sup>3</sup>

In some States the filing of articles in designated offices is specifically made a condition precedent to the legal existence of the corporation, while in others it is merely made a condition precedent to the right of the corporation to engage in business as such.<sup>4</sup> It has been held, however, in Missouri that in order to the creation of corporate existence articles must be filed in both State and county offices.<sup>5</sup>

At the present time it is safe to say that as to third parties the validity of corporate existence will be presumed even when articles have not been filed in local county offices as required. But in some jurisdictions attempts have been made to hold the incorporators liable as partners under such conditions.<sup>6</sup>

§ 81. *Distinction between de jure and de facto Corporations.* — A corporation *de jure* is one whose right to exercise corporate functions would prove invulnerable if assailed by the State in *quo warranto* proceedings.<sup>7</sup> A *de facto* corporation, on the other hand, is one the legality of whose existence may be inquired into by the State in *quo warranto* proceedings. The general rule is that to prove the existence of a corporation *de facto* it is necessary to

<sup>1</sup> *Loverin v. McLaughlin*, 161 Ill. 417; 44 N. E. 99.

<sup>2</sup> *Curtis v. Tracey*, 62 Ill. Ap. 49; *B. & T. Co. v. Gade*, 55 Ill. 181; *Johns v. People*, 25 Mich. 499; *Whitney v. Wyman*, 101 U. S. 392.

<sup>3</sup> *Bank v. Davies*, 43 Iowa, 424; *Martin v. Deetz*, 102 Cal. 55; 36 Pac. 368; *I. T., etc. Co. v. Herkimer*, 46 Ind. 142; *Humphreys v. Mooney*, 5 Col. 282; *Sims v. Commonwealth*, 24 Ky. L. Rep. 159; 71 S. W. 929; *Childs v. Hurd*, 32 W. Va. 66; 9 S. E. 362; *Abbott v. Co.*, 4 Neb. 416.

<sup>4</sup> *Bergeron v. Hobbs*, 96 Wis. 641; 71

N. W. 1056; *In re Shakopee Mfg. Co.*, 37 Minn. 91; 33 N. W. 219; *G. M. & S. Co. v. Richards*, 95 Mo. 106; 8 S. W. 246.

<sup>5</sup> *Hurt v. Salisbury*, 55 Mo. 310.

<sup>6</sup> See *P. & G. T. Co. v. Bobb*, 88 Ky. 226; 10 S. W. 794; *Rassbeck v. Destericher*, 55 How. Pr. 516; 4 Abb. New Cases, 444; *F. G. B. & T. Co. v. Gade*, 55 Ill. 181; *N. Y. N. Exchange Bank v. Crowell*, 177 Pa. 313; 35 Atl. 613; *Clegg v. Company*, 61 Ia. 121; 15 N. W. 865; *Gent v. Company*, 107 Ill. 652; *Childs v. Hurd*, 32 W. Va. 66; 9 S. E. 362.

<sup>7</sup> *Clapp v. Company*, 40 Neb. 470; 28 N. W. 956.

show (1) an act authorizing the creation of a corporation of that character; (2) an application duly made thereunder by the requisite number of incorporators praying for incorporation. (3) It is sometimes necessary, although not always, to show user thereunder.<sup>1</sup>

§ 82. **Right of Parties other than the State to collaterally impeach Corporate Existence.** — The right here referred to has already been considered somewhat at length in connection with a discussion of the right of third parties to collaterally attack corporate purposes and powers.<sup>2</sup> There are some additional matters, however, not already discussed to which attention will now be called.

As has already been suggested, the courts have taken varied and conflicting views relative to the right of parties other than the State to collaterally attack the existence of a corporation with whom they chance to be involved in litigation. The diverging views here referred to may be classified as follows: (1) the view that the State alone can test the question whether or not a corporation which has procured a charter from the proper State officials is in law as well as in fact a corporation;<sup>3</sup> (2) the view that this question may be inquired into by third parties, but that it is sufficient in such cases for the corporation to show substantial compliance with the conditions prescribed by the general incorporation act in order to prove that it is a corporation *de jure* as well as *de facto*;<sup>4</sup> (3) the view that the matter may be inquired into by third parties, and that under such circumstances it is necessary that the corporation shall show strict compliance with each and every condition precedent prescribed by the general incorporation act in order to establish the fact that it is a corporation *de jure* as well as *de facto*.<sup>5</sup>

For purpose of convenience these three diverging views may be

<sup>1</sup> Stout v. Zulick, 48 N. J. Law, 599; 7 Atl. 362; Haas v. Bank, 41 Neb. 754; 60 N. W. 85; Duggan v. Company, 11 Col. 113; 17 Pac. 105; Central Ag., etc. Ass'n v. Company, 70 Ala. 120; Baker v. Backus, 32 Ill. 79; Hughes v. Bank, 5 Litt. (Ky.) 45; Buffalo, etc. Ry. Co. v. Cary, 26 N. Y. 75; Finnegan v. Noerenberg, 52 Minn. 239; 53 N. W. 1150; Continental Trust Co. v. T., etc. Ry. Co., 82 Fed. 642; City of Guthrie v. Territory, 1 Okla. 188; 31 Pac. 190; A. L., etc. Co. v. M., etc. B.

Co., 157 Ill. 641; 42 N. E. 153; *In re Gibbs Estate*, 157 Pa. St. 59; 27 Atl. 383.

<sup>2</sup> See ante, § 6.

<sup>3</sup> See ante, § 6.

<sup>4</sup> Jones v. Company, 21 Col. 263; 40 Pac. 457; Stout v. Zulick, 48 N. J. L. 599; 7 Atl. 362; Finnegan v. Noerenberg, 52 Minn. 239; 53 N. W. 1150.

<sup>5</sup> Mokelumne, etc. Co. v. Woodbury, 14 Cal. 424; Lucas v. Bank, 2 Stew. (Ala.) 147.

distinguished as follows: referring to the first as to the true, the second as the substantial compliance, and the third as the strict compliance rule. Space will permit of discussion here of only the first of the rules just referred to.

The legislatures alone, as has been shown, can create a corporation. Under the modern practice these bodies have passed general incorporation acts entrusting the execution of the law to the executive department of the government. Under the rule now generally established, either by statute or judicial construction, in most of the States a corporation becomes a corporation *de facto* from the moment the charter or certificate of incorporation is issued by the proper State authorities.<sup>1</sup> The basis of holding such certificates as conclusive of corporate existence as against all the world except the State is that where by reason of such certificate a corporation is held out to the world as ready to undertake business, most disastrous consequences would follow to commercial undertakings if any private person was allowed to go back and enter into an examination of the circumstances attending the original incorporation.<sup>2</sup>

The power which creates the corporation it is needless to say should alone have the power to take it away. It should not be permitted to parties other than the State for this reason to collaterally impeach corporate existence, for to permit such impeachment would be in legal effect to permit third parties, for the purpose at least of that particular action, to destroy the effect of the previous action of the State in the premises. On grounds of public policy as to all parties but the State, it should under such circumstances be conclusively presumed that the statutory requirements relative to incorporation have been duly complied with.<sup>3</sup> A corporation must of necessity be presumed to be rightfully in possession of the franchise and rightfully exercising the power which the legislative grant confers. Individual right is not invaded if the presumption is true in fact and there is no usurpation. It is the State—the sovereign—whose rights are invaded and whose authority is usurped. The individual could not create the corporation, could not grant, define, or limit its powers; any grant of these by the sovereign cannot

<sup>1</sup> See *ante*, § 6.

<sup>2</sup> *Lake Superior Co. v. Morrison*, 22 (N. C.), 520; *Welch v. Bank*, 122 N. Y. Canada C. P. 224.

<sup>3</sup> *Tar River Nav. Co. v. Neal*, 3 Hawks (N. C.), 520; *Welch v. Bank*, 122 N. Y. 177; 25 N. E. 269.

lessen his right. There can consequently be no cause of complaint by the citizen, and no right to inquire whether the corporate existence is rightful, *de jure*, or merely colorable.<sup>1</sup>

Corporations may exist either *de jure* or *de facto*. If of the latter class, they are under the same protection of the law and governed by the same legal principles as those of the former so long as the State acquiesces in their existence and exercise of corporate functions. A private citizen whose rights are not invaded and who has no cause of complaint has no right to inquire collaterally into the legality of its existence. This can only be done in a direct proceeding on the part of the State from whom is derived the right to exist as a corporation and whose authority is usurped.<sup>2</sup>

A corporation *de facto* may legally do and perform every act and thing which the same entity could do and perform were it a *de jure* corporation. As to all the world except the paramount authority under which it acts and from which it receives its charter, it occupies the same position as though in all respects valid, and even as against the State, except in direct proceedings to arrest its usurpation of powers, its acts are to be treated as efficacious.<sup>3</sup>

Finally, it may be observed that the principle here contended for has been held by at least one court to be applicable to a case where a corporation had incorporated under an unconstitutional law, yet nevertheless the validity of the corporation's existence could not be collaterally attacked, as it had been chartered by the implied consent of the State.<sup>4</sup>

**§ 83. Right of State to attack Corporate Existence in Direct Proceedings.** — This section has reference only to actions brought by the State for the purpose of testing the legality of corporate existence where it is alleged that there has been a failure on the part of the incorporators to perform all the conditions prescribed by statute as a precedent to corporate existence. The action here referred to is that of *quo warranto*, which, even in the absence of statutory provision, may be maintained at common law in behalf of the State against incorporators who assume to exercise corpo-

<sup>1</sup> *Lehman v. Warner*, 61 Ala. 455.

<sup>3</sup> *People v. LaRue*, 67 Cal. 526; 8 Pac.

<sup>2</sup> *Snider's Sons' Co. v. Troy*, 91 Ala. 84.

224; 8 So. 658; *Tar River Nav. Co. v. Neal*, 3 Hawks (N. C.), 520.

<sup>4</sup> *Richards v. Bank*, 75 Minn. 196; 77 N. W. 822.

rate powers without being legally incorporated, for the purpose of ousting them from the exercise of such powers.<sup>1</sup>

In all such proceedings as against the State not merely a *de facto* corporate existence must be shown, but a *de jure* existence as well. The general prevailing view at the present time seems to be that, as against the State in such proceedings, it is necessary to show a specific statute authorizing the creation of corporations of the character of the one against which the *quo warranto* proceedings are brought, and also substantial compliance in the preliminary organization of the corporation with all conditions precedent prescribed by statute.<sup>2</sup>

In *quo warranto* proceedings the burden of proof is upon the corporation to show that it has been legally incorporated.<sup>3</sup> In the proceedings of the character referred to it has been well said that "public policy demands that the power to oust *de facto* corporations from the exercise of corporate powers because of failure to comply substantially with conditions precedent be sparingly exercised."<sup>4</sup>

Were the rule otherwise, disastrous consequences would follow in the commercial world, and in all such cases the courts should take extraordinary care to see that the rights of third parties are fully protected. In proceedings brought by the State, the most important matter to be looked at is whether there has been a failure on the part of the incorporators to comply with the provisions of the statute, which are merely directory as opposed to those that are mandatory. A "directory" provision is one which the legislature did not intend as essential to corporate existence, and the failure to comply with which is a mere irregularity and is not fatal to corporate existence. A "mandatory" provision, on the other hand, is one which must be substantially complied with in order to create a corporation *de jure*.<sup>5</sup> Whether the particular provision of the statute is directory or mandatory is to be determined by "the intention and true meaning of the legislature deduced from the act and sometimes aided by other acts *in pari*

<sup>1</sup> *Greene v. People*, 150 Ill. 513; 37 N. E. 842.

<sup>2</sup> *People v. Lowden* (Cal.), 8 Pac. 66.

<sup>3</sup> *State v. Webb*, 97 Ala. 111; 12 So. 377; *People v. Selfridge*, 52 Cal. 331; *State v. Critchett*, 37 Minn. 13; 32 N. W. 787; *Holman v. State*, 105 Ind. 569; 5 N. E. 702.

<sup>4</sup> *Duggan v. Company*, 11 Colo. 113; 17 Pac. 105.

<sup>5</sup> *Newcomb v. Reed*, 12 Allen, 362; *B. W. S. Co. v. Inhabitants of Braintree*, 146 Mass. 482; 16 N. E. 420.

*materia* and extraneous circumstances."<sup>1</sup> Even as against the State it is only necessary that a mandatory provision shall be substantially complied with.<sup>2</sup>

§ 84. **When does Corporate Existence commence?** — Where the statute provides, as it does in some of the Commonwealths, that the articles of incorporation shall be filed with State officials or in some local county office or both, the general rule is that the corporate existence dates from the time of filing of the articles with such officials and not from the time it begins to do business.<sup>3</sup> The foregoing seems to be the rule in force in the majority of States. Some of the States, however, provide by statute as to when corporate existence shall commence, as, for example, Alabama, California, Colorado, Connecticut, Delaware, Idaho, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.<sup>4</sup> In a number of the States corporate existence depends not merely upon filing articles with the Secretary of State, but also upon filing the same in the local recording office of the county where the principal place of business of the corporation is to be located, as, for example, in Arizona, California, Colorado, Delaware, Idaho, Maryland, Montana, New Jersey, Utah, and Wisconsin. In some few of the States the statute by reason of its peculiar provision seems to contemplate the corporate existence shall commence before the filing of articles of incorporation with any official, either State or county; this for the reason that the certificate required to be filed with such officials must be signed by corporate officers. States to which reference is here made are Arkansas, Illinois, Indian Territory, Maine, Massachusetts, Michigan, and Missouri.

<sup>1</sup> *Cross v. Company*, 17 Ill. 54; *Eakright v. Company*, 13 Ind. 404; *Newcomb v. Reed*, 12 Allen, 362.

<sup>2</sup> *People v. Company*, 97 Cal. 276; 32 Pac. 236; *State v. White*, 13 Mo. Appeals 139; *People v. Cheeseman*, 7 Colo. 376; 3 Pac. 716; *Newcomb v. Reed*, 12 Allen, 362; *Eakright v. Company*, 14 Ind. 404; *Walworth v. Bracket*, 19 Mass. 98; *B. W. S. Co. v. Inhabitants of Braintree*, 146 Mass. 482; 16 N. E. 420.

<sup>3</sup> *Hanna v. Company*, 23 O. St. 622; *G. M. & S. Co. v. Richards*, 95 Mo. 106; 8 S. W. 246; *Humphreys v. Mooney*, 5 Colo. 293; *V. C. Railway Co. v. Claves*, 21 Vt. 30; *Borough of Braddock v. Company*, 189 Pa. 379; 42 Atl. 15; *Badger Paper Co. v. Rose*, 95 Wis. 45; 70 N. W. 302; *Hunt v. Company*, 11 Kan. 412.

<sup>4</sup> See Part II., Synopsis-Digest of the Corporation Laws of the several States and Territories.

There seems to exist in some jurisdictions the theory that in the matter of determining when the corporate existence commences reference must be had, first, to the primary franchise of being a corporation vesting in the incorporators and next to the secondary franchise to do certain specific acts which vests in the corporation.<sup>1</sup> Again, in some States, while filing articles of incorporation constitutes a condition precedent to the creation of corporate existence, it is also a condition precedent to the right of doing business.<sup>2</sup>

Ordinarily corporate existence does not commence until all conditions precedent are performed.<sup>3</sup> There is a very obvious distinction between such acts as are declared to be necessary steps in the process of incorporation and such as are required of the individuals seeking to become incorporated, but which are not made prerequisites to the assumption of corporate powers. With respect to the former any material omission will be fatal to its existence as a corporation *de jure*, as against the State. In respect to the latter, failure to comply therewith is not ordinarily accompanied by forfeiture of its charter powers, but rather goes to the question of the personal liability of the individuals who attempt to do business as a corporation without having complied with all the conditions subsequent.<sup>4</sup>

Corporate existence in this immediate connection ordinarily means full authority to transact business as such in contradistinction to the qualified existence of such corporations which dates from the time of filing the articles of association with the Secretary of State.<sup>5</sup> So too, in those States where organization precedes the filing of a certificate of incorporation, it has been held that a corporation has a qualified existence from the date of the incorporators' first meeting.<sup>6</sup>

In Illinois corporate existence does not commence until the reception of a license from the Secretary of State to take stock

<sup>1</sup> State v. Water Co., 61 Kan. 547; 60 Pac. 337.

<sup>2</sup> Gade v. Company, 165 Ill. 367; 46 N. E. 286; Martin v. Deetz, 102 Cal. 55; 36 Pac. 368; *In re* S. M. Co., 37 Minn. 91; 33 N. W. 219; Johns v. People, 25 Mich. 499; G. M. & S. Co. v. Richards, 95 Mo. 106; 8 S. W. 246.

<sup>3</sup> Afferton v. Company, 67 Ind. 334; Borough of Braddock v. Company, 189

Pa. St. 379; 42 Atl. 15; Badger Paper Co. v. Rose, 95 Wis. 145; 70 N. W. 302.

<sup>4</sup> Herrod v. Hamer, 32 Wis. 162; E. G. L. Co. v. Green, 46 N. J. Eq. 118; 18 Atl. 844; M. H. M. Co. v. Woodbury, 14 Cal. 424.

<sup>5</sup> Hurt v. Salisbury, 55 Mo. 310.

<sup>6</sup> S. G. & P. Co. v. Scholfield, 70 Conn. 500; 40 Atl. 182.



subscriptions.<sup>1</sup> It would of course follow, from the necessities of the case, that before a corporation can contract as such, it must have a full and complete organization.<sup>2</sup> While ordinarily such organization is not necessary to the commencement of corporate existence, it is sometimes made so by statute.<sup>3</sup>

<sup>1</sup> *Stowe v. Flagg et al.*, 72 Ill. 397; *Curran v. Bradner*, 27 Ill. Ap. 582. O. St. 328; *U. R. Co. v. Holden*, 63 N. C. 410; *Teitig v. Boesman*, 12 Mont. 404;

<sup>2</sup> *Gent v. Company*, 107 Ill. 652.

31 Pac. 371.

<sup>3</sup> *A. & N. T. Ry. Co. v. Smith*, 15

## CHAPTER III.

## ORGANIZATION OF CORPORATIONS AFTER INCORPORATION.

§ 85. *The Incorporators' Organization Meeting.* — That a corporation shall have a full and complete organization and existence as an entity before it can enter into any kind of contract or transact any business, would seem to be self-evident. A corporation until organization has no franchises or faculties. Its existence before is but a qualified existence. Its powers are limited for the time being to the right to organize itself into an active corporate organization, and, as we have seen, those engaged in bringing it into being have no power to bind it by contract unless so authorized by the charter. Until organization as authorized by the charter, it does not possess the right to exercise its corporate functions, nor has it a valid existence for all purposes.<sup>1</sup>

In this connection it was observed in a leading case, that "it is often stated in the books that a corporation is created by its charter. This is not precisely correct. The charter only confers the life and provides the instruments by which it may become an acting entity. Such a corporation has been well defined to be an artificial being, existing only in contemplation of law. The instruments provided to bring the artificial being into active operation are the persons named in the charter, and those who by virtue of its provisions may become associated with them. These persons — the incorporators — as natural persons have no such power. The charter confers upon them a new faculty for this purpose, a faculty which they can have only by virtue of the law which confers it."<sup>2</sup>

The better, if not the prevailing, rule appears to be, that not only are the incorporators named in the articles of incorporation entitled to participate in the organization meeting thereof, but also all subscribers to the preliminary stock subscription to the capital stock of the proposed corporation may do so.<sup>3</sup>

<sup>1</sup> *Gent v. Company*, 107 Ill. 652.

<sup>2</sup> *Miller v. Ewer*, 27 Me. 509.

<sup>3</sup> *Baltimore City Pass. Ry. Co. v. Hambleton*, 77 Md. 341; *Spear v. Crawford*,

§ 86. *Organization Meeting, how called.*—The more recent incorporation acts, such as are in force in Connecticut, Maine, Massachusetts, New Jersey, North Carolina, and West Virginia, point out specifically how the organization meeting of a corporation is to be called. Where no such statutes exist the better and safer practice is for all the incorporators, as well as the subscribers to the preliminary subscription agreement to the capital stock of the proposed corporation, to sign a waiver and agreement fixing the time and place for the organization meeting of the corporation.<sup>1</sup>

It has been held that all are not required to be present at the organization meeting who sign the articles of incorporation unless the statute requires it. A majority, it is said, is sufficient.<sup>2</sup> The safer practice, however, is to comply with the rule stated above.<sup>3</sup>

Virginia is one of the few States possessing a statute giving the incorporators the right to assign their interests as such in a prospective corporation. Failure to call a meeting as provided by statute is to be regarded as a breach of a condition subsequent and is not fatal to the creation of a valid corporation.<sup>4</sup>

§ 87. *Organization Meeting, where held.*—It was laid down at an early date by the Supreme Court of Maine in *Miller v. Ewer*,<sup>5</sup> that all acts and proceedings of persons pretending to act in the capacity of incorporators when assumed without the bounds of the sovereignty granting the charter are absolutely void. The principle established in *Miller v. Ewer* has been quite generally adopted in other parts of the country.<sup>6</sup>

The reasoning of these cases is to the following effect: the charter bestows upon the incorporators certain privileges which

14 Wend. 24; *Nickum v. Burkhardt*, 30 Ore. 464; 47 Pac. 788; *Waukon, etc. Ry. Co. v. Dwyer*, 49 Ia. 121; *Instone v. Company*, 2 Bibb. (Ky.) 578; *Chester Glass Co. v. Dewey*, 16 Mass. 94; *Haskell v. Read* (Neb.), 93 N. W. 997.

<sup>1</sup> *B. B. R. Co. v. Buck*, 68 Me. 81.

<sup>2</sup> *Packard v. Co.*, 168 Mass. 92; 46 N. E. 433.

<sup>3</sup> See *Babbitt v. E. J. I. Co.*, 1 Stew. Dig. 208, § 13, not otherwise officially reported (1876); *Walworth v. Bracket*, 98 Mass. 98.

<sup>4</sup> *McClinch v. Sturges*, 72 Me. 288; *Braintree Water Supply Co. v. Braintree*, 146 Mass. 482; 16 N. E. 420; *In re British Sugar Refining Co.*, 3 Kay & J. 408; *Porter v. Robinson*, 40 Hun (N. Y.), 209.

<sup>5</sup> 27 Me. 509.

<sup>6</sup> *Freeman v. Company*, 38 Me. 343; *Smith v. Company*, 64 Md. 85; 20 Atl. 1032; *Camp v. Byrne*, 41 Mo. 525; *Humphreys v. Mooney*, 5 Col. 282; *Duke v. Taylor*, 37 Fla. 64; 19 So. 172; *Miller v. Parrish*, 14 N. J. Eq. 380; *Ormsby v. Company*, 56 N. Y. 623; *Mitchell v. Company*, 40 N. Y. Sup. Ct. 406; *F. T. L. Co. v. Laigle*, 59 Texas, 339; *Hodgson v. Company*, 46 Minn. 454; 49 N. W. 197; *Ohio, etc. Ry. Co. v. McPherson*, 35 Mo. 13; *Arms v. Conant*, 36 Vt. 744; *Galveston, etc. Ry. Co. v. Cowdrey*, 11 Wall. 459; *Runyan v. Coster*, 14 Peters, 122; *Augusta Bank v. Earle*, 13 Peters, 519; *Wright v. Lee*, 2 S. D. 596; 57 N. W. 706.

they can possess only by virtue of the law which confers it; that law is inoperative beyond the bounds of the legislative power by which it was enacted; that, as the foregoing faculty cannot accompany the incorporators beyond the bounds of the sovereignty which creates it, they cannot possess or exercise it there, and can have no more power there to make the artificial being act than other persons not named or associated as incorporators. Therefore any attempt to exercise such a faculty there is merely a usurpation of authority by persons destitute of it and acting without any legal capacity to act in that manner. If the foregoing reasoning be sound, it follows that all fundamental corporate acts and proceedings when assumed without the bounds of the sovereignty granting the charter are absolutely void. The principle here stated has been materially qualified in a large number of jurisdictions by an extended application of the doctrine of estoppel. As an example of this, attention is called to the case of *Handley v. Stutz*.<sup>1</sup>

This was a case where a Kentucky corporation at a meeting of the stockholders of the corporation, held outside of the State, increased the capital stock of the company from one hundred twenty thousand dollars to two hundred thousand dollars. It was contended that this increase was illegal, for the reason that the meeting of the stockholders authorizing it was held outside of the State of Kentucky. The court, in its opinion upon this point, spoke as follows:

“Nor were the proceedings of such meeting any less binding upon those participating in it by reason of the fact that it was held outside of the boundaries of the State under the laws of which the company was incorporated. By act of the Kentucky Legislature, it is provided, that all elections for directors and other officers by private corporations shall be held within the territorial limits of the State of Kentucky, and that any such election held outside of Kentucky shall be void. Beyond the election of officers, however, there is no statutory restriction of corporate action to the limits of the State, and in the absence of such inhibition the proceedings of such meeting would, with regard to directors’ meetings, be binding upon all those participating in it, as well as upon those acting upon the faith of its validity or receiving the stock authorized to be issued at said meeting. It is true that there are cases holding that stockholders’

<sup>1</sup> 139 U. S. 417; 11 S. Ct. 530.

meetings cannot be legally held outside of the home State of the corporation, but the question has generally arisen where a majority present had attempted by their action to bind a dissenting minority, or had taken action prejudicial to the rights of third persons. Indeed, so far as we know, the authorities are uniform to the effect that the action taken at such meeting was binding upon those who participated in or partook of the benefits of them. In this case the meeting was attended by all the stockholders but two, who were present by proxy. The vote increasing the stock was unanimous, and it does not lie in the mouth of those who participated in this act, or received the stock voted at this meeting, to question its validity."<sup>1</sup>

Unquestionably the legislature has the legal right, in the absence of constitutional provision, to provide that all meetings of corporations, whether organization or otherwise, may be held outside the State.<sup>2</sup>

§ 88. *Steps Necessary to complete Organization.*—The principal matters which demand attention at the organization meeting of a corporation may be enumerated as follows: (1) the adoption of by-laws; (2) election of directors; (3) providing for the issue and payment of the capital stock of the corporation. The subject of the adoption of by-laws and the payment of the capital stock of the corporation will be left for subsequent consideration.

With respect to the matter of the election of a board of directors the following may be said. Many of the incorporation acts require that the names of the first board of directors shall be set forth in the articles of incorporation, and this ordinarily obviates the necessity of electing a new board at the organization meeting of the corporation.<sup>3</sup> Unless the statute so requires it, it is not necessary, in order to give the incorporators the right to participate in the organization meeting, that they be stockholders.<sup>4</sup> But ordinarily it is contemplated by the incorporation acts that the incorporators shall be stockholders or subscribers for capital stock.

<sup>1</sup> See to the same effect *Heath v. S. L. Min. Co.*, 39 Wis. 146; *O. & M. Ry. Co. v. McPherson*, 35 Mo. 13; *Ormsby v. Vermont Min. Co.*, 56 N. Y. 632; *Humphrey v. Mooney*, 5 Col. 282; *Wright v. Lee*, 2 S. D. 596; 57 N. W. 706; *T. M. Co. v. Goodhue*, 18 N. C. 981.

<sup>2</sup> *Graham v. Co.*, 118 U. S. 161; 6 Sup. Ct. 1009.

<sup>3</sup> *Hamilton Trust Co. v. Clemens*, 163 N. Y. 423; 57 N. E. 614.

<sup>4</sup> *Hammond v. Straus*, 53 Md. 1; *Perkins v. Berders*, 56 Miss. 733; *Proprietors, etc. v. Dickinson*, 6 Gray (Mass.), 586; *Coyote v. Ruble*, 8 Oregon, 284; *Densmore Oil Co. v. Densmore*, 64 Pa. St. 43; *Singer Mfg. Co. v. Peck*, 9 S. D. 29; 67 N. W. 947; *Ramsey v. Tod*, 95 Texas, 614; 69 S. W. 133; *Byrnes v. Beck*, 10 Ga. 121; *B. B. & T. Co. v. J. B. T. Co.*, 101 Tenn. 545; 48 S. W. 228; *Wechselberg v. Bank*, 64 Fed. 90.

The right to vote stock is an incident to stock ownership, and was recognized at common law as a property right.<sup>1</sup>

In some few of the States, statutes exist limiting the right of stockholders to own more than a certain percentage of the total stock of the corporation.<sup>2</sup>

Sometimes the incorporators are appointed commissioners to take stock subscriptions. It has been held that the failure of such commissioners to take the oath of office as required by statute, will not render the subscriptions void.<sup>3</sup> Where authority to open books of subscription is given by statute to the incorporators, this authority may be exclusive, so that subscriptions cannot lawfully be received by others. Such subscriptions, however, may of course be ratified by proper parties.<sup>4</sup>

Ordinarily the election of officers is by statute devolved upon the board of directors. However, in some few of the States certain officers are required to be elected by the stockholders.

§ 89. *Adoption of By-Laws.*—A by-law is in effect a continuing rule of action for the government of the corporation, its members and officers.<sup>5</sup> The purpose of a by-law is to regulate and define the duties of the stockholders between themselves and the conduct of the officers and the management of the corporate affairs.<sup>6</sup>

All corporations have the implied power to make by-laws for the government of the corporation and the management of its affairs.<sup>7</sup> Unless otherwise provided by statute, the by-laws must be adopted by the incorporators at their organization meeting or else by the stockholders at a meeting duly called for that purpose.<sup>8</sup>

Some few of the States, among them being South Dakota, North Dakota, and Oklahoma, permit incorporators to adopt by-laws, whether they are subscribers for the capital stock of the proposed corporation or not. Statutory provisions exist in several of the

<sup>1</sup> *Commonwealth v. Dalzell*, 152 Pa. St. 217; 25 Atl. 535.

<sup>2</sup> *Mack v. Company*, 90 Ala. 396; 8 So. 150; *Commonwealth v. Detwiller*, 131 Pa. St. 614; 18 Atl. 990. On right of corporation to vote its own shares see *McNeely v. Woodruff*, 13 N. J. L. 352; *Ex parte Holmes*, 5 Cowen (N. Y.), 426; on right of corporations to vote shares in another corporation see *Davis v. Company*, 77 Md. 35; 25 Atl. 982.

<sup>3</sup> *Hollman v. Company*, 9 Gill & J. (Md.) 462.

<sup>4</sup> *N. C. M. Ry. Co. v. Ealow*, 40 Mich. 222.

<sup>5</sup> *N. M. T. S. Co. v. Bishop*, 103 Wis. 492; 79 N. W. 785.

<sup>6</sup> *Flint v. Pierce*, 99 Mass. 70.

<sup>7</sup> *Engelhardt v. Association*, 148 N. Y. 281; 42 N. E. 710.

<sup>8</sup> *M. G. R. Co. v. Wysong*, 51 Ind. 12.

states, expressly permitting provision to be made, if desired, for the adoption of by-laws by the directors. In the absence of any such statutory authority, by-laws adopted by the directors are not binding unless subsequently ratified by the stockholders.<sup>1</sup> On the other hand, if the directors are vested by statute with exclusive power to pass by-laws, those passed by the stockholders are not valid.<sup>2</sup>

The adoption of by-laws is a constituent act, and for this reason they must be adopted within the State by whose laws the corporation was created, if action of stockholders is necessary to their adoption.<sup>3</sup> In the absence of statutory power or charter provision, by-laws can be altered or repealed by the stockholders alone.<sup>4</sup>

In the absence of statutory prohibition, the power to amend or alter by-laws may be delegated by the stockholders to the directors. In general by-laws must be adopted in conformity to the charter and be reasonable and proper.<sup>5</sup>

The by-laws of a private corporation will be interpreted by the courts as interpreted by the corporation.<sup>6</sup>

The reasonableness of a by-law is a question of law and not of fact.<sup>7</sup>

In drawing by-laws the following rules should govern: they should be made certain;<sup>8</sup> they must be directed to all within the sphere of their operation;<sup>9</sup> they must operate equally upon all to whom applied;<sup>10</sup> they must be lawful as against members possessing rights, and must be reasonable.<sup>11</sup>

Sometimes the statute requires by-laws to be adopted within thirty days after incorporation and copied into a book of by-laws.<sup>12</sup> Such statutes are clearly directory and not mandatory.

§ 90. **Election of Directors.** — The power to choose a board of

<sup>1</sup> *Carroll v. Bank*, 8 Mo. Ap. 253.

<sup>2</sup> *In re Klaus*, 67 Wis. 40; 29 N. W. 582; *People v. Company*, 82 Ill. 457; S. S. Ass'n v. Company, 25 Mo. Ap. 642.

<sup>3</sup> *In re Klaus*, 67 Wis. 40; 29 N. W. 582; *Mitchell v. Company*, 40 N. Y. Sup. Court, 413.

<sup>4</sup> *M. G. R. Company v. Wysong*, 51 Ind. 12.

<sup>5</sup> See *Kent v. Company*, 78 N. Y. 182; *Bergman v. Association*, 29 Minn. 275; 13 N. W. 120; *Commons v. Company*, 12 Pa. St. 318; *People v. Chicago Board of Trade*, 45 Ill. 118.

<sup>6</sup> *State ex rel. Attorney-General v. Conklin*, 33 Wis. 21.

<sup>7</sup> *State v. Overton*, 4 Zabriskie (N. J.), 435.

<sup>8</sup> *Goddard v. Merchants' Exchange*, 9 Mo. Ap. 290.

<sup>9</sup> *Ex parte Frank*, 52 Cal. 606.

<sup>10</sup> *People v. Society*, 25 Barb. (N. Y.) 7.

<sup>11</sup> *Com. v. Worcester*, 3 Pick. 461; *King v. Union*, 170 Ill. 135; 48 N. E. 677. On failure to post by-laws, see *Langon v. Company*, 49 Ia. 317.

<sup>12</sup> See *Hall v. Crandall*, 29 Cal. 567; *Clapman v. Doray*, 89 Cal. 52; 26 Pac. 605.

directors is inherent in all private corporations irrespective of statute.<sup>1</sup>

The election of directors in connection with the organization of a corporation ordinarily follows the adoption of by-laws. After the organization the election of directors is usually had at the annual meeting of the corporation. In giving the notice of such annual meeting it is customary to specify in the notice that a board of directors is to be chosen.<sup>2</sup>

In choosing the directors it is incumbent upon the incorporators or stockholders, as the case may be, to observe the provisions of the statutes relative to the number of directors to be chosen and their qualifications as to stock-holdings, residence, and citizenship if any such are prescribed by statute. In the absence of such statutes as exist in many of the States authorizing the dividing of directors into classes, so that only a certain portion of the board are elected annually, the full board must be elected each year. In the absence of statute making the ownership of stock a qualification for holding the office of director such ownership is not necessary.<sup>3</sup> Even where the statute requires that directors shall be stockholders, it is not necessary that they shall become such before their election if they become stockholders before entering upon the duties of their office.<sup>4</sup> In the election of directors by the incorporators it is sufficient in order to qualify him that a director be a subscriber for stock, though no certificate has in fact been issued.<sup>5</sup> Where ownership of stock is necessary to qualify one as a director, the prevailing rule seems to be that the moment a director ceases to be a stockholder, he ceases to be a director *de jure* (but not *de facto*) without proceedings having first been taken to remove him.<sup>6</sup>

Where a director is required to take an oath of office before entering upon the discharge of his duties, his failure to take such an oath will not prevent him from becoming a director *de facto*.<sup>7</sup> Any person who can be a business agent for another can, if possessed of statutory qualifications, become a director.<sup>8</sup> Ordinarily

<sup>1</sup> Hurlbut v. Marshall, 62 Wis. 590; 22 N. W. 852.

<sup>2</sup> Merritt v. Ferris, 22 Ill. 303.

<sup>3</sup> Wright v. Company, 117 Mass. 226.

<sup>4</sup> Greenough v. Company, 64 Fed. 22.

<sup>5</sup> McComb v. Association, 10 N. Y. Sup. 552; Beckett v. Houston, 32 Ind. 393.

<sup>6</sup> Dispatch Light Packet v. Company, 12 N. H. 205; Wright v. Company, 52 N. J. Eq. 352; Howe v. Scarborough (Ala.), 35 So. 113.

<sup>7</sup> Simpson v. Garland, 76 Me. 203.

<sup>8</sup> People v. Webster, 10 Wend. (N. Y.) 554.



it is not necessary that resignations of directors be accepted in order to become effective.<sup>1</sup>

Persons owning a majority of stock have a right to elect directors.<sup>2</sup> It is a fundamental principle in corporation law that a majority of stockholders shall control the policy and regulate the business affairs of the corporation, and to this each stockholder impliedly agrees when he acquires stock in the corporation.<sup>3</sup> However, in order to insure minority representation on the board, cumulative voting for directors is permitted in a large number of the States.<sup>4</sup> Where such right to cumulate votes is mandatory such right cannot be taken away by by-law.<sup>5</sup>

The fact that a corporation begins business with an insufficient number of directors does not invalidate debts contracted by them, nor deprive it of its corporate rights and privileges unless some action is taken by the State to that end.<sup>6</sup> Failure to elect a board of directors annually does not work dissolution. The old board will hold over by implication of law.<sup>7</sup> This is a rule not only established by statute in a large number of the States, but is a well established rule of corporation law in the absence of such statutes.<sup>8</sup> In the election of directors a majority vote of all present is sufficient, provided a majority of the stock is represented at the meeting.<sup>9</sup> Vacancies in the board of directors cannot be filled by the remaining directors, but must be filled by the stockholders, unless such power is expressly granted by statute.<sup>10</sup> Even where the right to fill vacancies is given to the remaining directors it is probably true that there must be present at the meeting a majority of the whole number of directors prescribed by the charter, and that such vacancy be filled by a majority vote thereof.<sup>11</sup>

Unless regulated by statute or by-laws, the board of directors may fix any place within the domiciliary State at which annual

<sup>1</sup> *Pres., etc. of Manhattan Co. v. Kal-*  
*denberg*, 165 N. Y. 1; 58 N. E. 790;  
*Briggs v. Spaulding*, 141 U. S. 155.

<sup>2</sup> *Faulds v. Yates*, 57 Ill. 416.

<sup>3</sup> *Wheeler v. Company*, 143 Ill. 197;  
32 N. E. 420.

<sup>4</sup> See Part III. Table 9, page 579.

<sup>5</sup> *Tomlin v. Bank*, 52 Mo. Ap. 430;  
*Wright v. Company*, 67 Cal. 532; 8 Pac.  
70.

<sup>6</sup> *Fargason v. Company*, 78 Miss. 65;  
27 So. 877.

<sup>7</sup> *Hunter v. Company*, 26 La. Ann. 13.

<sup>8</sup> *Chamberlain v. D. S. Works*, 103  
Mich. 124; 61 N. W. 532; *Moses v. Tomp-*  
*kins*, 84 Ala. 613; 4 So. 763.

<sup>9</sup> *Eggleston v. Doolittle*, 33 Conn. 402.

<sup>10</sup> *Moses v. Tompkins*, 84 Ala. 613; 4  
So. 763; *Kearney v. Andrews*, 10 N. J.  
Eq. 70.

<sup>11</sup> *Moses v. Tompkins*, 84 Ala. 613; 4  
So. 763; *Nathan v. Tompkins*, 82 Ala.

meetings for the election of directors may be held.<sup>1</sup> Where there are mandatory provisions in the charter, statute, or by-laws as to place of holding annual meetings these must be followed.<sup>2</sup> Where the certificate of incorporation is required to fix the number of directors, such number cannot be changed except by amendment thereof.<sup>3</sup>

In connection with the general subject of election of directors the question not infrequently arises as to the validity of the so-called "voting trusts" now becoming so common in this country. The prevailing and it is believed the true rule on this subject is set forth in *Clowes v. Miller*,<sup>4</sup> where it was held that in the absence of any improper motive such trusts are valid.<sup>5</sup> It is, in the absence of such improper motives, merely a convenient method of voting by proxy.

In the absence of statute, charter provision, or valid by-law to the contrary, holders of preferred stock have the same rights in the election of directors as belong to the holders of common stock.<sup>6</sup> It has been held that stockholders may in voting for directors change their vote while the election is in progress.<sup>7</sup> Mandamus is the proper remedy to compel canvassing of votes at election of directors to determine whether or not such election was valid.<sup>8</sup>

In some of the States there are certain statutory officers known as "Inspectors of Election," who must be chosen preliminary to the election of the board of directors. These inspectors should be chosen in the mode provided in the by-laws.<sup>9</sup> Inspectors have no power, express or implied, to pass upon the eligibility of directors.<sup>10</sup> The failure to have the inspectors sworn before acting as such will not invalidate an election.<sup>11</sup> In the absence of statutory provision

<sup>1</sup> *Corbett v. Woodward*, 5 Saw. 403; *Commonwealth v. Smith*, 45 Pa. St. 59; *Pratt v. Company*, 35 Conn. 365; *Duke v. Taylor*, 37 Fla. 64; 19 Sou. 172; *Hilles v. Parish*, 14 N. J. Eq. 380; *Arms v. Conant*, 36 Vt. 744; *Hodgson v. Company*, 46 Minn. 454; 49 N. W. 197.

<sup>2</sup> *McDaniel v. Company*, 22 Vt. 274.

<sup>3</sup> See *Matter of Griffin Iron Co.*, 63 N. J. L. 168; 41 Atl. 931.

<sup>4</sup> 60 N. J. Eq. 179; 47 Atl. 345.

<sup>5</sup> See also *Faulds v. Yates*, 57 Ill. 416; *Moses v. Scott*, 84 Ala. 608; 4 So. 742; *O. & M. Ry. Co. v. State*, 49 O. St. 668; 32 N. E. 933; *Mobile, etc. Ry. Co. v. Nicholas*, 98 Ala. 92; 12 So. 723.

<sup>6</sup> *Mackintosh v. R. R. Co.*, 32 Fed. 350; 54 Fed. 582; *Lockhart v. Van Alstyne*, 31 Mich. 76; *Miller v. Ratterman*, 47 O. St. 141; 24 N. E. 496.

<sup>7</sup> *State v. McGains*, 64 Mo. Ap. 225.

<sup>8</sup> *State v. McGains*, 64 Mo. Ap. 225.

<sup>9</sup> *In re Excelsior Fire Ins. Co.*, 16 Abb. Pr. 8; *People v. Company*, 55 Barb. 344; *In re Lighthall Mfg. Co.*, 47 Hun. 258; *State v. Merchant*, 37 O. St. 251; *Commonwealth v. Woelper*, 3 S. & R. (Pa.) 29.

<sup>10</sup> *In re St. Lawrence Steamboat Co.*, 44 N. J. L. 529.

<sup>11</sup> *In re M. & H. Ry. Co.*, 19 Wend. (N. Y.) 135.

or regulation by by-laws providing otherwise, the power to appoint inspectors of election lies with the stockholders alone.<sup>1</sup>

§ 91. **Power to hold Meetings for the Election of Directors without the Domiciliary State.**—The general rule unquestionably is that in the absence of statute or unanimous consent of all the stockholders no election of directors by the stockholders can be legal, so as to make them directors *de jure*, when had at a meeting called without the limits of the State under whose laws the corporation is created.<sup>2</sup>

Twelve of the Commonwealths have statutes expressly authorizing the holding of stockholders' meetings without the domiciliary State.<sup>3</sup> In any event, it seems to be now well settled that where all the stockholders meet without the State and transact business thereat, even though such business be the annual election of directors, the stockholders present at such meeting are estopped to question the validity of the proceedings had thereat.<sup>4</sup> An excellent method of validating any action taken by stockholders at meetings held without the domiciliary State is to have subsequent action taken by the stockholders at a meeting called within the State ratifying what has been previously done by them without the State. This, it has been held, cures all previous defects.<sup>5</sup>

§ 92. **Voting by Proxy.**—At common law, voting of stockholders at annual meetings or special meetings was required to be done in person.<sup>6</sup> In the absence of statute, charter provision, or valid by-law giving stockholders this right, the same rule would apply at the present day.<sup>7</sup>

<sup>1</sup> 1 State v. Merchant, 37 O. St. 251.

<sup>2</sup> Harding v. American Glucose Co., 182 Ill. 551; 55 N. E. 577. See Hodgson v. Company, 46 Minn. 454; 49 N. W. 197; Freeman v. Company, 38 Me. 343; Smith v. Silver Valley Min. Co., 64 Md. 85; 20 Atl. 1032; Aspinwall et al. v. Ohio & M. R. R. Co., 20 Ind. 492; W. H. & H. Mining Co. v. King, 45 Ga. 34; Hiles v. Parrish, 24 N. J. Eq. 380; Arms v. Conant, 36 Vt. 750; Bellows v. Todd, 39 Iowa, 209; Franco-Texas Land Co. v. Laigle, 59 Tex. 339; Mack v. De Bardelben, etc. Co., 90 Ala. 396; 8 So. 150; Duke v. Taylor, 37 Fla. 64; 19 So. 172; Camp v. Byrne, 41 Mo. 525; Mitchell v. Vt. Copper Min. Co., 40 N. Y. Sup. Ct. 406; Galveston, etc. Ry. Co. v. Cowdrey,

11 Wall. 459; 20 Law Ed. 199. The principle of estoppel may be applied here. Handley v. Stutz, 139 U. S. 417; 11 Sup. Ct. 530.

<sup>3</sup> See Part III. Table 11, page 581.

<sup>4</sup> T. M. Co. v. Goodhue, 18 N. Car. 981; Handley v. Stutz, 139 U. S. 417; 11 Sup. Ct. 530.

<sup>5</sup> G. I. & E. Co. v. Toler, 80 Md. 278; 30 Atl. 657.

<sup>6</sup> Perry v. Company, 93 Ala. 364; 9 So. Rep. 217.

<sup>7</sup> Phillips v. Wickham, 1 Paige (N. Y.), 590; Taylor v. Griswold, 14 N. J. L. 222; P. H. S. Bank v. Superior Court, 104 Cal. 649; 38 Pac. 452; State v. Tudor, 5 Day, 329; People v. Crossley, 69 Ill. 195; Perry v. Company, 93 Ala. 364; 9 So. 217.

Owing to the unquestioned right of a corporation to adopt a valid by-law permitting voting by proxy, even in the absence of a statute authorizing it, the question has ceased to be one of any great practical importance in the country to-day. Besides this, statutes exist in all of the States and Territories, except Arizona and Georgia, expressly authorizing the voting of stock by proxy. It should be observed, however, that where the right to vote by proxy is given by statute without restriction it cannot be qualified by by-law.<sup>1</sup>

Proxies may be issued in blank and lawfully filled in by the holder.<sup>2</sup> It has been held that stockholders cannot give an irrevocable proxy to secure the payment of a debt.<sup>3</sup> It is against the settled rules governing the control of corporations that an irrevocable power of attorney which directs the vote on stock, should be vested in a person who has no interest in the stock or is not a representative of a person interested therein.<sup>4</sup>

The foregoing suggests the question as to whether or not voting trusts, so common at the present time, are valid. A "voting trust" may be defined to be an agreement of stockholders to give any designated trustee the right to vote at his discretion through stockholders for a given period of time. It may be said that such voting trust is valid where neither the purposes nor the means used contravene any constitutional or statutory provision or well-recognized principles of public policy, and are within the scope of the powers of the contracting parties.<sup>5</sup>

§ 93. **First Directors' Meeting.** — The principal business to be transacted at the first meeting of the board of directors of a corporation is (1) the election of the officers provided for in the by-laws; (2) the carrying into effect the resolutions passed at the organization meeting of the stockholders, if any, looking to the payment of the stock in property, or, in lieu thereof, the

<sup>1</sup> *Bank v. Superior Court*, 104 Cal. 649; *Kreisel v. Distilling Co.*, 61 N. J. Eq. 5; 38 Pac. 452.

<sup>2</sup> *Matter of White*, 45 Hun, 580; 105; 55 N. E. 809; *Moses v. Scott*, 84 Ala. 608; 4 So. 742; *Clowes v. Miller*, 60 N. J. Eq. 179; 47 Atl. 345; *Sullivan v. Parkes* (N. Y.), 69 Ap. Div. 221; 74 N. Y. Sup. 786; *Freon v. Company*, 42 O. St.

<sup>3</sup> *Matter of Germicide Co.*, 65 Hun, 606; 20 N. Y. Sup. 495.

<sup>4</sup> *Clowes v. Miller*, 60 N. J. Eq. 179; 47 Atl. 345.

<sup>5</sup> *M. & O. R. v. Nichols*, 98 Ala. 92; 12 So. 723; *Smith v. Company*, 115 Cal. 584; 489.

passage of a resolution by the board of directors ordering an assessment, either in whole or in part, upon the par value of the capital stock. The general rule appears to be that unless the governing statute or a by-law of the corporation expressly provides that directors' meetings should be held within the domiciliary State, that such meetings may be held without the limits of such State if desired.<sup>1</sup>

Some courts, however, apparently distinguish in this regard between meetings of the board of directors for the election of officers and those meetings merely called for the transaction of routine business. Such courts hold that meetings of the first class must be held within the domiciliary State, while the others may be held without such State if desired.<sup>2</sup> In nearly half of the States statutes exist authorizing the holding of directors' meetings without the State.<sup>3</sup> It is unquestionably true that where incorporators can perform constituent acts outside of the domiciliary State directors can elect officers in like manner.<sup>4</sup>

When calling the directors together for their first meeting, the mode of notice provided for in the by-laws must be given. In the absence thereof personal notice must be given, or a waiver of notice must be had from each of the directors.<sup>5</sup> It is hardly necessary to state in this connection that no director can lawfully delegate power to act for him to another person.<sup>6</sup>

At common law a majority of the directors present and voting at a meeting was necessary to constitute a quorum of the full board.<sup>7</sup> In some few of the States, notably Oregon, statutory provisions exist permitting less than a majority of the board of directors to constitute a quorum. Provisions in statutes and by-laws requiring the election of directors to be held on a specified date are ordinarily construed to be merely directory.<sup>8</sup> The general rule is that a majority of the directors constitute a quorum

<sup>1</sup> *Thompson v. Company*, 58 Miss. 423; *Lead Co. v. Reinhard*, 114 Mo. 218; 21 S. W. 488; *Bassett v. Mining Co.*, 15 Nev. 293; *Parsons v. Lent*, 34 N. J. Eq. 67; *Hanna v. Company*, 23 O. St. 622.

<sup>2</sup> *Smith v. Mining Co.*, 64 Md. 85; 20 Atl. 1032; *G. I. & E. Co. v. Toler*, 80 Md. 278; 30 Atl. 651.

<sup>3</sup> See Part III. Table 12, page 582.

<sup>4</sup> *Ohio, etc. R. R. Co. v. McPherson*, 35 Mo. 13.

<sup>5</sup> *Bank v. McCarthy*, 55 Ark. 473; 18 S. W. 759; *B. B. R. Co. v. Buck*, 68 Me. 81; *Library v. Association*, 173 Pa. St. 30; 33 Atl. 744.

<sup>6</sup> *Perry v. Company*, 93 Ala. 364; 9 So. 217; *Craig Medicine Co. v. Merchants' Bank*, 59 Hun, 661; 14 N. Y. Sup. 16.

<sup>7</sup> *Blackwell v. State*, 36 Ark. 178.

<sup>8</sup> *Beardaley v. Johnson*, 121 N. Y. 224; 24 N. E. 380.

for the transaction of business, and a majority of the quorum have power to bind the corporation by their votes.<sup>1</sup>

§ 94. **Election of Corporate Officers.** — In nearly all of the States statutes exist designating certain officers that business corporations must have, and providing that such officers shall be elected by the board of directors duly convened for that purpose. Where, however, as is sometimes the case, this power is devolved upon the stockholders by statute, then directors have no power to elect such officers.<sup>2</sup> In the absence of such statutes as are here referred to, giving the directors power to elect officers, it must be admitted that the current of authority is to the effect that the power then lies in the stockholders alone.<sup>3</sup>

The law implies that directors shall hold their office until their successors have been elected and qualified.<sup>4</sup> Where vacancies occur in the board of directors they must be filled, in the absence of statute, charter provision, or by-law giving the power to the directors, by the stockholders only, and even where the power to fill vacancies is lawfully bestowed upon the remaining directors, vacancies can then be filled only by action of a majority of the authorized number of directors.<sup>5</sup>

Questions of policy, or management, or expediency of contract or action, or consideration of gross misappropriation or unlawful appropriation of corporate funds to the detriment of corporate interests, are left generally to the decision of the directors if their powers are without limitation and free from restraint. To hold otherwise would be to substitute the judgment and discretion of others in place of those determined on by the scheme of incorporation.<sup>6</sup>

§ 95. **Appointment of Executive Committee.** — The incorporation acts of Connecticut, Delaware, Massachusetts, Nevada, New Jersey, North Carolina, Virginia, and West Virginia all authorize the appointment by the board of directors from their own number of an executive committee to whom may be entrusted most of the ordinary duties that devolve upon the full board of directors.

<sup>1</sup> Ten Eyck v. Company, 74 Mich. 226; 41 N. W. 905; see also Hoyt v. Thompson, 19 N. Y. 207.

<sup>2</sup> See *In re* St. Helen Mill Co., 13 Saw. 92; Walsenberg v. Water Co. v. Moore, 5 Col. App. 144; 38 Pac. 60.

<sup>3</sup> Beardsley v. Johnson, 121 N. Y. 224; 24 N. E. 380; *In re* A. A. G. Iron Co., 63 N. J. Law, 168, 357; 41 Atl. 931; 46 Atl. 1097.

<sup>4</sup> People v. Rankle, 9 Johnson (N. Y.), 147; Huguenot Nat. Bank v. Studwell, 6 Daly (N. Y.), 713.

<sup>5</sup> Moses v. Tompkins, 84 Ala. 613; 4 Sou. 763.

<sup>6</sup> Ellerman v. Ry. Co., 49 N. J. Eq. 217; 23 Atl. 287; Ulmer v. Company, 98 Me. 579; 57 Atl. 1001.

It was at one time held that the performance of any duties by the board of directors involving the exercise of discretion and judgment could not be so delegated.<sup>1</sup> The modern rule, even in the absence of statute, is that directors have the power to delegate to a part of their own number authority to perform any part of the ordinary business of the corporation, even though it involves the exercise of the broadest judgment and discretion.<sup>2</sup>

In any event, whenever a question is raised as to the validity of acts done by an executive committee, the ratification of their action by the full board will undoubtedly correct all defects in the act complained of which would have been valid in the first instance if performed by the board itself.<sup>3</sup>

§ 96. **Stock Assessments.**—Where the capital stock of a corporation is not all issued in the first instance in exchange for property, it is customary for the board of directors to pass a resolution at their first meeting, making an assessment upon the stock of stockholders either for its entire par value or some fractional part thereof. Generally speaking, in order to sustain a right of action on stock subscriptions, it is necessary to show that a valid call or assessment has been made.<sup>4</sup> An assessment is a rating or fixing of the proportion by the board of directors or by the stockholders, which every subscriber is to pay of his subscription, of which notice is given, which notice is referred to as a "call."<sup>5</sup>

While it is doubtless true that a "call" may be made either by the directors or the stockholders, nevertheless it is usually made by the directors. This of course necessitates the organization of the corporation as a preliminary to the making of a valid assessment.<sup>6</sup> The purpose of the "call" is to fix the time for payment where that is not provided for either by statute, charter provisions, or by-law.<sup>7</sup> The better rule seems to be that the

<sup>1</sup> Gillis v. Bailey, 21 N. H. 149.

<sup>2</sup> Hoyt v. Thompson, etc., 19 N. Y. 207; Burden v. Burden, 159 N. Y. 187; 54 N. E. 17; Jones v. Williams, 139 Mo. 1; 40 S. W. 383; Davis v. Company, 2 Utah, 74; Tempel v. Dodge, 89 Texas, 69; 32 S. W. 514; 33 S. W. 222; Metropolitan Telephone Co. v. Company, 44 N. J. Eq. 568; 14 Atl. 907; Sheridan Electric Light Co. v. Bank, 127 N. Y. 517; 28 N. E. 467.

<sup>3</sup> U. P. Ry. Co. v. Company, 163 U. S. 564; 16 S. Ct. 1173.

<sup>4</sup> Chandler v. Siddle, 5 Fed. Cases No. 2594; 3 Dillon, 477.

<sup>5</sup> Spangler v. Company, 21 Ill. 276.

<sup>6</sup> Williams v. Taylor, 120 N. Y. 244; 24 N. E. 288; Williams v. Company, 153 Ind. 496; 55 N. E. 425.

<sup>7</sup> West v. Crawford, 80 Cal. 19; 21 Pac. 1123; W. S. Bank v. Bank, 107 Mo. 133; 17 S. W. 644; Champion Fire Kinsler Co. v. Rischert, 74 Mo. Ap. 537.

directors have implied power by virtue of their office to make assessments.<sup>1</sup>

In any event, shareholders may delegate such power to the directors when the same is given to them by statute or by-law.<sup>2</sup> It is questionable, however, whether the directors have power in their turn to delegate the power of making assessments to some ministerial officer.<sup>3</sup> In the making of assessments the utmost care should be observed to see that all the statutory requirements relative to the same are complied with.

§ 97. **Certificates required to be made by Officers or Directors after Organization.** — In Maine, Massachusetts, Arkansas, and Indiana the statutes require that the board of directors together with certain of the corporate officers shall file a certificate of organization with certain officers. Ordinarily the failure to file such certificate would not affect the legal character of the corporation unless there was a statutory provision to that effect.<sup>4</sup> In Illinois, Missouri, Tennessee, and Utah a certificate of due organization is issued to the corporation by State officials.<sup>5</sup>

In New York, New Jersey, District of Columbia, Nevada, Indiana, Massachusetts, North Carolina, and Colorado the law requires that after the payment, either in whole or in part, of the capital stock a certificate shall be made and filed in the proper State office setting forth the facts relative to such payment.<sup>6</sup> In some of the States, notably New Jersey, failure to file such certificate renders the officers neglecting or refusing to make such certificate for thirty days after written request so to do, jointly and severally liable for all debts contracted before the filing of such certificate.<sup>7</sup>

Unless there is a penalty provided, such provisions are merely directory.<sup>8</sup>

<sup>1</sup> *Budd v. Company*, 15 Ore. 413; 15 Pac. 659; *Smith v. Company*, 1 How. (Miss.) 479.

<sup>2</sup> *Rives v. Company*, 30 Ala. 92.

<sup>3</sup> *Pike v. Company*, 68 Me. 445; *S. H. Road v. Green*, 12 R. I. 164.

<sup>4</sup> *In re Shakopee, etc. Co.*, 37 Minn. 91; 33 N. W. 219; *Franklin Bridge Co. v. Wood*, 14 Ga. 80; *In re Philadelphia Artisans Institute*, 8 Phila. 229; *A. S. A. & G. Co. v. Whittier*, 117 Mass. 451.

<sup>5</sup> See *Boston Acid Mfg. Co. v. Morning*, 15 Gray (Mass.), 251.

<sup>6</sup> Also in Delaware upon request of a creditor or stockholder.

<sup>7</sup> *Nassau Bank v. Brown*, 30 N. J. Eq. 478; *Waters v. Quinby*, 27 N. J. L. 296. See *S. F. N. Bank v. Almy*, 117 Mass. 476; *Chase's Pat. El. Co. v. Company*, 152 Mass. 428; 28 N. E. 300; *Chase v. Lord*, 77 N. Y. 1; *Block v. Womer*, 100 Ill. 328; *Hardman v. Sage*, 124 N. Y. 25; 26 N. E. 354; *Flash v. Conn*, 16 Fla. 428; *Austin v. Berlin*, 13 Col. 200; 22 Pac. 433.

<sup>8</sup> *Veeder v. Undgett*, 95 N. Y. 295.



§ 98. **Time in which Corporation must organize and commence Business.**—Over half of the States have provisions upon their statute books requiring corporations to organize and commence business within from one to five years after the issuance of their charter.<sup>1</sup> Usually the penalty for failure to so organize and commence business is the right given to the State to bring proceedings for the forfeiture of the corporation's charter on the ground of non-user thereof during the statutory period. It is undoubtedly true, however, that as against all but the State failure to organize and commence business within the time limited by statute will not prevent it from becoming a corporation *de facto*.<sup>2</sup>

§ 99. **Stock Certificates.**—Stock certificates are the muniments and evidence of the holder's title to a given share in the property and franchises of the corporation in which he is a member.<sup>3</sup> Subscribers to the capital stock upon complying with the terms of their subscription are entitled to certificates of stock showing the number of shares owned by them. These certificates must be signed by the officers designated for that purpose by statute or, in the absence of statutory provision, by such officers as are designated in the by-laws for that purpose.<sup>4</sup> A seal is not necessary to the validity of a corporation of stock in a corporation (although it is customary to affix one), and this, too, even in the presence of statutory requirements.<sup>5</sup> Neither is it necessary to the validity of a stock certificate that it should be issued in the State of the corporation's domicile.<sup>6</sup> Generally speaking, however, the stock certificate book, seal, and stock transfer books must be kept within the State unless the statute provides otherwise.<sup>7</sup>

Statutory provisions exist in nearly all the States providing the minimum and maximum par value of shares of capital stock.<sup>8</sup> In some few States the statute expressly provides that all the stock certificates issued by a corporation shall be of a uniform par value. Even in the absence of such a mandatory provision, it is at least

<sup>1</sup> See Part III. Table 11, page 581; see also *People v. Ry. Co.*, 45 Cal. 306; *Commonwealth v. Water Co.*, 110 Pa. St. 391; 2 Atl. 63.

<sup>2</sup> *Lehman v. Warner*, 61 Ala. 455; *S. L. A. & T. H. Ry. Co. v. Company*, 158 Ill. 390; 41 N. E. 916; *County of Macon v. Shores*, 97 U. S. 272.

<sup>3</sup> *Mechanics Bank v. Company*, 13 N. Y. 599.

<sup>4</sup> *N. O. & T. P. Co. v. Bank (Ohio)*, 24 Wk. Law Bul. 198; *Titus v. G. W. T. Road*, 61 N. Y. 237.

<sup>5</sup> *Fitzhugh v. Bank*, 3 Monroe (Ky.), 128; *Halsted v. Dodge*, 1 How. Pr. (N. Y.) 170.

<sup>6</sup> *Courtright v. Deeds*, 37 Ia. 503.

<sup>7</sup> *Perkins v. Lyons*, 111 Ia. 192; 82 N. W. 486.

<sup>8</sup> See Part III. Table 6, page 576.

questionable whether the courts would sustain the issuance of stock certificates of more than one designated par value.<sup>1</sup> In the absence of statute prohibiting the same, corporations may insert in stock certificates such stipulations as they choose relative to the rights of the holders of such certificates, and these constitute valid contracts between the stockholders and the corporation.<sup>2</sup>

<sup>1</sup> See *In re Cressona Building Ass'n*, 1 pany, 129 (Pa.) St. 405; 18 Atl. 414; *Delaware Legal Register* (Pa.), 177. As to meaning field v. Illinois, 2 Hill (N. Y.), 172.  
of par value, see *Commonwealth v. Com-*

<sup>2</sup> *Pioneer Co. v. Brockett*, 58 Ill. Ap. 204.

## CHAPTER IV.

### ISSUANCE AND PAYMENT OF CAPITAL STOCK.

§ 100. **General Remarks as to the Issuance and Payment of Capital Stock upon the Organization of a Corporation.** — In connection with the issuance and payment of capital stock following the organization of a corporation, several important matters should be considered, such, for example, as the time within which the capital must be paid in; the question as to how the capital must be paid in with reference to whether in cash, in property, or in services; and, finally, consideration of the safest and most convenient method to be adopted by the corporation so that it can sell a portion of its capital stock at less than par, if necessary, for the procuring of working capital for the corporation; and this, too, without subjecting the purchasers of such stock to any liability to creditors for alleged unpaid stock subscriptions thereon.

It appears that in certain of the States, notably South Dakota and Tennessee, it is not necessary that any of the capital stock be either subscribed or paid in, in order that the corporation may transact business.<sup>1</sup> In the several States provisions of the several incorporation acts in force therein differ greatly in regard to the matter of the time within which capital stock must be paid in. New York requires that half of the authorized capital be paid in within one year; Missouri, fifty per cent thereof immediately; Maryland, one-fourth of the capital must be paid in each year; in Indiana, manufacturing corporations must pay in all their capital within eighteen months. Twenty of the States require a certain percentage of the capital to be paid in, in order to commence business; while in twenty-five a certain percentage of the authorized capital must be subscribed.<sup>2</sup> As a general rule the effect of the provisions of law here referred to when they are not complied with has been held not to affect the existence of a corporation as a corporation *de jure*, but merely afford ground for a

<sup>1</sup> See *ante*, § 2.

<sup>2</sup> See Part III. Table 6, page 576.

judgment of ouster in a proper action brought by the State for that purpose.<sup>1</sup>

Sometimes the statutes go further and require certificates as to the payment of the capital stock to be filed in designated offices.<sup>2</sup>

§ 101. *Manner of Payment of Capital Stock.* — Probably no subject of corporation law is more involved in apparently hopeless confusion than that growing out of the question of the payment of capital stock of corporations where the rights not only of stockholders, but creditors as well, are involved. Frequent attempts have been made from time to time by both State legislatures and the courts looking to the enactment or declaration of rules which will remove the question from its present vague and unsatisfactory form into the realm of certainty and security. It may not be without its practical value to trace here the sporadic development of the various doctrines that have been advanced from time to time relative to both how the capital stock of a corporation may be paid in, and when so paid in whether the valuation placed upon the property accepted by the corporation in exchange for stock, shall be conclusive alike upon stockholders and creditors. The common law rule with reference to the manner of payment of the capital stock of a corporation appears to have been from time immemorial that it must have been paid for either in money or money's worth.<sup>3</sup> In this country such a rule seems to have obtained at an early date. Even when required, by constitutional provision or statute, that stock should be paid for in cash, nevertheless the courts early adopted the view that the same might be paid for in money or money's worth. Otherwise it would simply put the corporation to the necessity of issuing stock in the first instance for money, and then ordering it to be immediately paid out for necessary labor, property, or services.<sup>4</sup>

The next step in order of development was the enactment of either constitutional or statutory provisions expressly authorizing

<sup>1</sup> *Baker v. Backus*, 32 Ill. 79; *Fargason v. Company*, 78 Miss. 65; 27 So. 877; *Hammond v. Strause*, 53 Md. 1; *People v. Chambers*, 42 Cal. 201; *People v. Bank*, 7 Col. 226; 3 Pac. 214; *Palmer v. Lawrence*, 3 Sandf. N. Y. 161; *Lake Ontario, etc. R. Co. v. Mason*, 16 N. Y. 451; *Spartenburg, etc. R. Co. v. Ezell*, 14 S. C. 281; *State ex rel. v. Webb*, 97 Ala. 111; 12 So. 377.

<sup>2</sup> See *Quinby v. Waters*, 28 N. J. L. 533. See *ante*, sec. 97.

<sup>3</sup> *Drummond's Case*, L. R. 4 Chan. Ap. 772.

<sup>4</sup> *Liebe v. Knapp*, 79 Mo. 22; *Camden v. Stuart*, 144 U. S. 104; 12 S. Ct. 585; *Kronert v. Johnston*, 19 Wash. 96; 52 Pac. 605.

the payment of stock of corporations in money, property, or services. Later came a wave of constitutional enactments mainly confined to the Western States, to the effect "that no corporation should issue stock except for money, labor done, or property actually received, and declaring that all fictitious increase of stock should be void." In early times, when the number of corporations formed were few in number, and their charters limited to a few purposes, the courts were seldom called upon to determine whether or not capital stock had been actually paid in in accordance with law,—this for the reason that in most cases the mode of payment of such stock had been in cash. However, early in the nineteenth century the question became a vital one through the not infrequent attempts on the part of certain corporations to pay for their stock in property taken at a valuation which in the opinion of many was largely fictitious if not fraudulent. When such corporations became insolvent, creditors, and sometimes before that time stockholders, brought the question in its practical form before the courts as to whether such valuation were binding not only upon the corporation, but upon its creditors as well. It was such a case which led Justice Joseph Story in 1824 to give utterance to the famous "trust fund doctrine" to the effect that the capital stock of a corporation is to be regarded at all times as a fund held in trust by the corporation for the benefit of its creditors.<sup>1</sup>

In its practical application the trust fund doctrine was found to be an instrument of injustice rather than of justice. Besides this it had never received the sanction of the common law, as it existed in England before the Revolution, and had not in its last analysis any right to demand recognition on the broad basis laid down for it by its founder. By degrees the majority of the courts refused to recognize the trust fund doctrine, at least in its original form, and declared upon the only safe ground, which was that stockholders should only be held liable to creditors on stock issued in exchange for property, upon the ground of fraud.<sup>2</sup> At the same time the courts divided upon the question whether in the appraisal of property taken in exchange for capital stock corporations should be required to appraise such property at its true value without regard to the intention of the parties upon whom the duty of

<sup>1</sup> See *Wood v. Dummer*, 3 Mason, 308; Fed. Cases No. 17944.

<sup>2</sup> See opinion of Justice Wm. Mitchell in *Hospes v. Company*, 48 Minn. 174; 50 N. W. 1117.

making such appraisal was imposed, or whether they should treat all such appraisals as conclusive upon both the corporation and creditors when made in good faith and where no actual fraud appeared in the transaction. At this time, too, the courts almost universally decided to distinguish in this regard between the rights of the corporation and its stockholders on the one hand and the rights of creditors on the other. Such a distinction as is here referred to was evidenced by the adoption of the rule now recognized everywhere that a valuation placed upon stock by the corporation may be valid and binding upon the corporation and its stockholders and yet not conclusive as against creditors.<sup>1</sup>

The doctrine here referred to is well stated by Judge Showalter in a Federal case as follows : <sup>2</sup>

“Whatsoever may have been in fact the value of the property turned over to the company for its stock, the latter agreed to take it for the stock. The persons interested were the stockholders, and there was no dissent on the part of any person concerned in what was thus done. Neither any person thus holding stock nor any person who afterwards became a stockholder by assignment from one who then held stock can now make complaint on behalf of the corporation against the lawfulness of that transaction. This I take to be the settled law on that subject.”

The next evolutionary step is to be found in the recognition by both the legislatures and courts of a number of the Commonwealths of the unsatisfactory results attending the application of not only the narrow and falsely conceived “true value rule” above referred to, but that of the “good faith rule” as well. It was clearly seen that something further was needed in order to remove the subject for all time from its situation of uncertainty and doubt. Both the legislatures and the courts of these Commonwealths undertook to remedy the matter, with what success it will hereafter appear. Certain of the States, such as New Jersey, New York, Delaware, West Virginia, Connecticut, and others, enacted statutes providing in substance that in those cases where corporations attempted to issue their capital stock as fully paid in exchange for property,

<sup>1</sup> *Handley v. Stutz*, 139 U. S. 417 ; 35 N. Y. 263 ; 26 N. E. 145 ; *Parmalee v. L. E. 227* ; *Scovill v. Thayer*, 105 U. S. Price, 208 Ill. 544 ; 70 N. E. 725.

143 ; 26 L. E. 968 ; *Barr v. Company*, 125 <sup>2</sup> *Northern Trust Co. v. Company*, 75 Fed. 936.

the valuations placed upon such property by the board of directors thereof should, in the absence of actual fraud or gross overvaluation, be conclusive in the premises. Again, other States sought to remedy the evil in a surer, if less generally satisfactory form. Thus, for example, Michigan, Virginia, Florida, and other States have acts upon their statute books requiring a description of the property which they desire to accept in exchange for their capital stock to be submitted to State officials in order that the valuation placed upon such property by the corporation may be approved by such State officials before the stock can be issued; the act further generally providing that after such appraisal has been approved by the State officials, it should be conclusive in the premises.

Turning now to the efforts of the court on their part to remedy the evil above referred to, the following may be said. Without in terms adopting what is hereinafter referred to as the "speculative value rule" the courts in recent years have often recognized, in connection with attempts on the part of corporations to issue stock as full paid in exchange for property, the distinction that clearly obtains between property which has either a well-known or easily ascertained market value and that other species of property of the character commonly known as "speculative," which without any present large intrinsic value, possesses nevertheless in almost every instance a large value for future speculative purposes, not determinable, however, by the ordinary market value standards. Such a rule, when generally recognized, will have the effect in law of practically dividing corporations into two great classes with respect to the question of issuing stock thereof in exchange for property, to wit, non-speculative and speculative corporations.

On the subject now before us certain portions of the able report of the Massachusetts legislative committee on corporations rendered in 1903, is so peculiarly instructive and appropriate that we venture to quote the following extract therefrom:

"The history of corporations, as well as the logic of the case, shows that there are possible two general theories as to the State's duty in creating corporations: first, the old theory that, being creatures of the State, they should be guaranteed by it to the public in all particulars of responsibility and management; and the modern quite opposite theory that, in the absence of fraud in its organization

or government, an ordinary business corporation should be allowed to do anything that an individual may do. Under the old theory, the capital stock of a corporation was, in the law, considered to be a guarantee fund for the payment of creditors, as well as affording a method of conveniently measuring the interests of the individual owners of a corporate enterprise. There resulted from this principle not only the fundamental proposition that the capital stock, being in the nature of a guarantee fund, should be paid up at its full par in actual cash, but all the other provisions to protect creditors or other persons having dealings with the corporation: such as, that the debts of a corporation should not exceed its capital stock, designed primarily in the interest of creditors and secondarily in that of the stockholders, who were looked after as carefully as if they were the wards of the State when dealing in corporation matters. Under the modern theory the State owes no duty to persons who may choose to deal with corporations, to look after the solvency of such artificial bodies; nor to stockholders, to protect them from the consequences of going into such concerns, the idea being that in the case of ordinary business corporations the State's duty ends in providing clearly that creditors and stockholders shall at all times be precisely informed of all the facts attending both the organization and the management of such corporations, and particularly that there should be full publicity given to all details of the original organization thereof.

"The committee has had little hesitation in determining which of these theories it should adopt. The limit of capitalization both in amount and in valuation to the net tangible assets of the corporation has unquestionably had much to do with the arrest of corporate growth in this Commonwealth. Good-will, trade-marks, patents may unquestionably be valuable assets, which, under our present method, may not be capitalized. Admirable as this theory may have been, of payment of capital stock in full in cash, the condition is so easily avoided in practice that the result is that our existing law promises a protection which, in reality, it does not afford, and is merely an embarrassment to those who feel obliged to comply not only with the letter but with the spirit of the law. It is no longer true that persons dealing with corporations rely upon the State laws to guarantee their solvency or their proper management. The attempts of the Commonwealth to do so by laws still remaining on its statute books result, as we apprehend, only in a false sense of security; and we believe that the act proposed, while giving up the attempt to do the impossible thing, will really, by its greater attention to the details of organization required to be made public by all corporations, result in an advantage to stockholders and creditors more substantial than the



present partial attempt to enforce a principle impossible of complete realization and which is, under existing laws, easily evaded.

"It is impossible to reconcile or combine the two systems. Either the old theory must be maintained, under which the State attempts though vainly to guarantee both to stockholders and creditors that there is one hundred dollars of actual value behind each one hundred dollars of par value of capital stock, or some other system must be adopted which, while not being chargeable with the vagueness and laxity of the newer legislation of other States, will permit a share of capital stock, although nominally one hundred dollars in value, to represent, as the word implies, only a certain share or proportion, which may be more or less than par, of whatever net assets the corporation may prove to have. Under a system of this sort the State machinery will only provide that the stockholders and, perhaps, the creditors, may at all times have access to the corporation records or returns in such manner as clearly to show, both at organization and thereafter, all of the property or assets of which such share of capital stock actually represents its proportion of ownership.

"The question of monopoly the committee does not conceive to have been left to its consideration. The limitations now existing on the capitalization of business corporations are, no doubt, attributable to the sentiment which has always existed against monopoly, but it is clearly the policy of the Commonwealth, as shown in its recent legislation, to do away with the attempt to prevent large corporations, simply because they are large. Moreover, it is apprehended that the question of monopoly, or rather of the abuse of the power of large corporations, does not result necessarily from the size of corporations engaged in business throughout the United States. In the opinion of the committee, some confusion has been created, in the discussion of the form of so-called trust legislation, by a failure to appreciate that its real object is not to protect the investor, who can or should learn to take care of himself, or the creditor who has already learned to do so. The real purpose of such legislation is the protection of the consumer. In other words, there is no reason for an arbitrary limitation of capitalization unless it can be used as a means of creating a monopoly which will influence the price of commodities. In the opinion of the committee, the question of capitalization is not a contributing factor in the fight for a monopoly. The United States Steel Company would have no greater and no less a monopoly of the steel business if it were organized with one-half of its present capitalization. The Standard Oil Company has a very conservative capitalization, and yet it is the most complete monopoly of any industrial corporation in this country.

"At all events, it is no better for the State to leave its citizens at the mercy of the large corporations created by other less careful sovereignties, than to permit the organization of corporations adequate to the demands of modern business under its own laws, subject to its own more careful regulation and control. Under our State and Federal system it is practically impossible for any one State, by its own laws, to control foreign corporations, but so far as possible at present the committee has sought to subject them to the same safeguards of reasonable publicity and accurate returns, both as to organization and annual condition, as the State requires of its own corporations. The simple requirement of an annual excise tax, based on the capitalization of such foreign corporations, will serve to bring them under the control of this State, and the way will be open for their further regulation if desirable. This annual tax has been levied upon the same principle as the corresponding tax paid by home corporations. The State should impose no greater burden on foreign corporations than on its own, but should, so far as possible, subject them to its own laws.

"The committee would repeat its opinion that, so far as purely business corporations are concerned, and excluding insurance, financial, and public service corporations, the State cannot assume to act, directly or indirectly, as guarantor or sponsor for any organization under corporate form. It can and should require, for itself and for the use of all persons interested in the corporation, the fullest and most detailed information, consistent with practical business methods, as to the details of its organization, the powers and restrictions imposed upon its stockholders, and as to the property against which stock is to be or has been issued.

"Capital stock may be paid for in cash or by property. If it is paid for in cash, it may be paid for in full or by instalments, and a machinery has been created for protecting the corporation against the failure of the subscribers to stock to pay the balance of their subscriptions. If stock is paid for by property, the incorporators and not the State are to pass upon its value. Before any stock, however, can be issued for property, a description of the property sufficient for purposes of identification, to the satisfaction of the Commissioner of Corporations, must be filed in the office of the Secretary of the Commonwealth. This document becomes a public record, and may be consulted by any one interested in the corporation. If the officers of a corporation make a return which is false and which is known to be false, they are liable to any one injured for actual damages. If a full and honest description is made of property against which stock is issued, a stockholder cannot complain because of his failure to inform

himself by personal examination or investigation of the value of the property in which he is, or contemplates becoming, an investor.

"The second principle upon which the committee has acted in its specific recommendations is this: that the State should permit the utmost freedom of self-regulation if it provides quick and effective machinery for the punishment of fraud, and gives to each stockholder the right to obtain the fullest information in regard to his own rights and privileges before and after he becomes the owner of stock."

§ 102. **Payment of Capital Stock in Services.** — The statutes of Alabama, Arkansas, California, Colorado, Delaware, Florida, Idaho, Kentucky, Maine, Missouri, Montana, North Dakota, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin expressly authorize the payment of stock in services. It sometimes becomes a question of importance to know just what is meant by "services" as used in this connection.<sup>1</sup> Frequently attempts are made to issue stock to persons gratuitously for the use of their name in the promotion of the corporation under the theory that permission to use their name is a proper service rendered to the company, against which stock may be issued. The current of authority seems to be against this proposition.<sup>2</sup>

Still again, the constitutional provision which exists in many of the States declaring all fictitious increase of stock void militates against such lines of procedure.<sup>3</sup>

Oftentimes an attempt is made to issue stock to promoters of corporations under what is known as "promotion stock." The promoters are usually the incorporators, and as such are not entitled to gifts of stock.<sup>4</sup> However, if in the promotion of the company services and time have been employed, the same may be recompensed to the extent of the just value of such services.

§ 103. **Payment of Capital Stock in Property.** — In most of the Commonwealths statutes exist expressly authorizing the payment of capital stock of a corporation in property.<sup>5</sup> Even in the absence

<sup>1</sup> See *Arapahoe, etc. Co. v. Stevens*, 13 Fogg v. Blair, 139 U. S. 118; 35 Law Ed. Col. 534; 22 Pac. 823; *Clevenger v. Moore* 104. (N. J.), 58 Atl. 88.

<sup>2</sup> *P. S. Bank v. Company*, 105 Mich. 416; 48 Pac. 377.

535; 63 N. W. 514; *Christensen v. Eno*, 4 Brown v. F. S. H. Co., 119 Fed. 106 N. Y. 97; 12 N. E. 648; *Handley v.* 472.

*Stutz*, 139 U. S. 417; 35 Law Ed. 227; <sup>5</sup> See Part III. Table 10, page 580.

of such statute stock may doubtless be issued in the same manner, provided the purchase of such property is within the express or implied powers conferred by the charter and the property is of such a character as to be suitable for the specific purpose for which the corporation was formed.<sup>1</sup> Some few of the States describe in considerable detail just what kinds or classes of property may be accepted by the corporation in exchange for its capital stock. The incorporation acts of Alabama, North Carolina, Virginia, West Virginia, and New Jersey are particularly full in this regard. In the absence of such provisions corporations under the restrictions stated above may accept in payment of their capital stock all kinds of real and personal property having some monetary value, such as mining lands, gas lands, patent rights, secret formulæ, trade-marks, and the good will of an established business.<sup>2</sup>

The payment of capital stock may be made in notes, bonds, or mortgages in the absence of any statutory or charter prohibition.<sup>3</sup> But as to creditors, if the notes, bonds, or mortgages should turn out to be worthless, the parties accepting such stock might be compelled to pay the par value of such stock in money.<sup>4</sup> So it has been held that stock of a corporation may be paid for in advertising,<sup>5</sup> in a license to take minerals from lands,<sup>6</sup> and in stock in other corporations.<sup>7</sup>

In other words, capital stock of a corporation may be issued against any property which the corporation is authorized to purchase, or which is necessary for its legitimate business.<sup>8</sup>

One of the most frequent questions with which an attorney has to deal in connection with the organization of a corporation has reference to devising some safe method whereby stock may be legally issued in the first instance as full paid and non-assessable, to be thereafter sold below par if necessary for the purpose of procuring a working capital for the company. The main thing

<sup>1</sup> *Liebke v. Knapp*, 79 Mo. 22.

<sup>2</sup> *Loud v. Company*, 153 U. S. 564; 141 S. Ct. 928; *Carr v. La Fevre*, 27 Pa. 417; *American Tube & Iron Co. v. Company*, 165 Pa. St. 489; 30 Atl. 940; *Young v. Company*, 65 Mich. 111; 31 N. W. 814; *Washburn v. Company*, 81 Fed. 17; *Whitehill v. Jacobs*, 75 Wis. 474; 44 N. W. 630; *Bank v. Company*, 32 W. Va. 37; 59 S. E. 243; *Kelly v. Clark*, 21 Mont. 319; 53 Pac. 959.

<sup>3</sup> *Goodrich v. Reynolds*, 31 Ill. 490;

*Stoddard v. Company*, 44 Conn. 545.

<sup>4</sup> *Bouton v. Denent*, 123 Ill. 142; 14 N. E. 62.

<sup>5</sup> *Liebke v. Knapp*, 79 Mo. 22.

<sup>6</sup> *Shepard v. Drake*, 61 Mo. Ap. 134.

<sup>7</sup> *East N. Y. J. R. Co. v. Lighthall*, 36 How. Pr. 481.

<sup>8</sup> *Bruner v. Brown*, 139 Ind. 600; 38 N. E. 318.

to be kept in mind in connection with the foregoing is to see that the stock is so issued that future purchasers thereof shall not be liable thereon either to the corporation or to creditors. This can be accomplished most satisfactorily in the following manner.

Have the corporation accept the proposition to issue its capital stock, either in whole or in part, against real or personal property to be thereafter duly conveyed or transferred to the corporation. Next the property so conveyed or transferred should be appraised at a valuation which will stand the test according to the character of the property so conveyed or transferred of either the good faith or the speculative value rules already referred to. The next step is for the party to whom such stock is issued to transfer such stock, either in whole or in part, back to the corporation under a trust agreement providing that the same shall be sold at such times and at such prices as to the board of directors of the corporation will seem advisable for the purpose of procuring the necessary working capital. Under such circumstances the stock so transferred, while originally issued at par, may be sold at the best price obtainable, and the purchasers will not incur liability beyond the agreed price even to subsequent creditors.<sup>1</sup> The same is true of stock that has been forfeited for non-payment of assessments.<sup>2</sup>

§ 104. **Statement of True Value Rule.** — In connection with the appraisal of property taken by a corporation in exchange for its capital stock, the courts have established various rules with a view to laying down some satisfactory principle upon which such appraisal may be based in those cases where creditors seek to enforce as against the holders of such stock an alleged liability for unpaid stock subscriptions. The various rules here referred to may be enumerated as follows: "the true value rule," "the good faith rule," and "the speculative value rule." It is to the first of these that our attention will now be directed.

What is known as "the true value rule" is a natural outgrowth of the adoption by many of the courts of the trust fund doctrine enunciated by Judge Story in *Wood v. Dummer*.<sup>3</sup> This may be

<sup>1</sup> *Iron Co. et al. v. Hayes et al.*, 165 Pa. St. 489; 30 Atl. 936; *Lake Sup. Iron Co. v. Drexel*, 90 N. Y. 87; *Davis Bros. v. Company*, 101 Ala. 127; 8 So. 496; *Alling v. Wenzel*, 133 Ill. 264; 24 N. E. 551; *M. & L. R. Ry. Co. v. Dow*, 120 U. S. 287; 7 S. Ct. 482; *Coleman v. Howe*, 154 Ill. 458; 39 N. E. 725; *Kimball v. Company*, 69 N. H. 485; 45 Atl. 253.  
<sup>2</sup> *Pullman v. Company*, 73 Ill. Ap. 313; *Otter v. Company*, 50 Barb. 247.  
<sup>3</sup> 3 *Mason*, 308; *Fed. Cases*, No. 17944.

stated as follows: That the courts will not treat anything in the shape of property accepted by the corporation in exchange for its capital stock as payment thereof except to the extent of the true value of the property received, wholly without regard to the presence of fraud or the absence of good faith in the transaction.<sup>1</sup>

Not only has the true value rule been adopted by many courts, irrespective of statute, but it has found legislative recognition as well. Thus the incorporation act of Alaska requires that such property shall be assessed at its true money value; that of Connecticut and Delaware, at its actual value; in Kentucky, at its market price; in North Dakota and South Carolina, at its true money value; in Tennessee and Utah, at its fair cash value, and Florida, at a just valuation. In Connecticut, Massachusetts, and North Dakota the necessity of making such appraisal according to the strict letter of the statute is very forcibly suggested by making the directors liable to all parties injured thereby in case they fail to make such appraisal as directed by the act. Statutory provisions which exist in so many of the States declaring all fictitious increase of stock void have been held by the courts not to make the validity of an over-issue of stock dependent upon the inquiry whether the money or property received therefor was of equal value in the market with the stock so issued, or to restrict private corporations acting without the approval of their stockholders in the sale of their stock for money, property, or labor done upon such terms as they might deem proper, provided always that the transaction is a real one, based upon present consideration, having reference to legitimate corporate purposes, and is not merely a device to evade the law and accomplish that which is forbidden.<sup>2</sup>

§ 105. **Statement of Good Faith Rule.**—As has already been observed in a previous section,<sup>3</sup> the trust fund theory of Justice Story no longer obtains in a majority of the States. With the absence of any general recognition by the courts of this doctrine, there necessarily followed the abrogation of the true value rule, which was based largely upon the trust fund doctrine. In its place has appeared in many jurisdictions what is known as the “good faith rule.” The true value rule in its practical application was harsh and unconscionable, was wholly in the interest of

<sup>1</sup> *Shickle v. Watts*, 94 Mo. 410; 7 Pac. 582; *M. & L. R. Ry. Co. v. Dow*, S. W. 274. 120 U. S. 287; 7 S. Ct. 482.

<sup>2</sup> *Smith v. Company*, 115 Cal. 584; 47 <sup>3</sup> *Ante*, § 101.

creditors, and made little account of the interests of equally innocent stockholders. The good faith rule, on the other hand, while often difficult of practical application, is much more liberal and fair to all concerned than the rule which it is now so rapidly supplanting. It may be stated as follows :

That where the governing statute authorizes the shares to be paid for in property instead of cash, or where the law of the State concedes this power, then the fact that they are so paid for at a fair valuation of the property, affords no ground of complaint to the creditors, provided such payment is made and accepted in good faith. In fact, in order to render the transaction void either gross over-valuation or actual fraud must be shown.<sup>1</sup>

In order to obtain a clear understanding of the distinction that exists between the true value rule and the good faith rule, it is necessary to understand the reasons which actuated so many of the courts in repudiating in the first instance the trust fund doctrine in order to clear the way for the adoption by such courts of the good faith rule. Nowhere will be found a better statement of this matter than that presented by Justice William Mitchell of the Minnesota Supreme Court in the case of *Hospes v. Northwestern Manufacturing Company*.<sup>2</sup>

"It is difficult," said Justice Mitchell, "if not impossible, to explain or reconcile decisions and cases bearing upon the trust fund doctrine, or, in the light of them, to predicate the liability of the stockholder upon that doctrine. But by putting it upon the ground of fraud, and applying the old and familiar rules of law on that subject to the peculiar nature of a corporation and the relation which its stockholders bear to it and to the public, we have at once rational and logical ground on which to stand. The capital of a corporation is the basis of its credit. It is a substitute for the individual liability of those who own its stock. People deal with it and give it credit on the faith of it. They have a right to assume that it has paid in capital to the amount which it represents itself as having; and if they give it credit on the faith of that representation, and if the representation is false, it is a fraud upon them; and in case the corporation becomes insol-

<sup>1</sup> *Bank v. Alden*, 129 U. S. 372; 32 L. E. 725; *Rood v. Wharton*, 74 Fed. 118; *Whitehill v. Jacobs*, 75 Wis. 474; 44 N. W. 630; *Young v. Company*, 65 Mich. 111; 31 N. W. 814.  
<sup>2</sup> *Coit v. Company*, 119 U. S. 343; 7 S. Ct. 231; *Boynton v. Hatch*, 47 N. Y. 225; 48 Minn. 174; 50 N. W. 1117.  
*Van Cott v. Van Brunt*, 82 N. Y. 535;

vent the law, upon the plainest principles of common justice, says to the delinquent stockholder, 'Make that representation good by paying for your stock.' It certainly cannot require the invention of any new doctrine in order to enforce so familiar a rule of equity. It is the misrepresentation of fact in stating the amount of capital to be greater than it really is that is the true basis of the liability of the stockholders in such cases; and it follows that it is only those creditors who have relied, or who can fairly be presumed to have relied, upon the professed amount of capital, in whose favor the law will recognize and enforce an equity against the holders of 'bonus stock.' This furnishes a rational and uniform rule, to which familiar principles are easily applied, and which frees the subject from many of the difficulties and apparent inconsistencies into which the 'trust-fund' doctrine has involved it; and we think that even when the 'trust fund' doctrine has been invoked the decision in almost every well-considered case is readily referable to such a rule."

Another statement of the good faith rule is to be found in *Kelley v. Company*,<sup>1</sup> to the following effect: If the nature of the property and the extent of the valuation are such that the latter might have been due to errors of judgment, then to render the transaction invalid as against creditors actual fraud must be shown, and the question is one of fact. On the other hand, if the over-valuation is so gross that it could not have been due to mere errors of judgment, the transaction will be held fraudulent as a matter of law.<sup>2</sup>

§ 106. **Statement of "Speculative Value Rule."**—It must be admitted that neither the "true value rule" nor the "good

<sup>1</sup> 21 Mont. 319; 51 Pac. 959.

<sup>2</sup> *Coleman v. Howe*, 154 Ill. 458; 39 N. E. 725; *N. H. H. N. Co. v. Company*, 142 Mass. 349; 7 N. E. 773; *Hastings Malting Co. v. Company*, 65 Minn. 28; 67 N. W. 652; *Northern Trust Co. v. Company*, 75 Fed. 936; affirmed in *Dickinson v. Northern Trust Co.*, 80 Fed. 452; *Washburn v. Company*, 81 Fed. 17; *Goodrich v. Reynolds*, 31 Ill. 490; *Edwards v. Company*, 27 La. Ann. 474; *Whitehill v. Jacobs*, 75 Wis. 474; 44 N. W. 630; *Humaston v. Company*, 20 Wall. 20; *State v. Webb*, 110 Ala. 214; 20 So. 462; *Skinner v. Smith*, 134 N. Y. 240; 31 N. E. 911; *Parmalee v. Price*, 208 Ill. 544; 70 N. E. 725; *Phelan v. Hazard*, 19 Fed. Cases No. 11068; 5 Dill 45; *Smith v. Ferrier*, etc.

*Ry. Co. (Cal.)*, 51 Pac. 710; *Jenkins v. Bradley*, 104 Wis. 540; 80 N. W. 1025; *Gamble v. Q. C. W. Co.*, 128 N. Y. 91; 25 N. E. 201; *Young v. Erie Iron Co.*, 65 Mich. 111; 31 N. W. 814; *Bank v. Alden*, 129 U. S. 372; 32 L. E. 725; *Coffin v. Ransdell*, 110 Ind. 417; 11 N. E. 20; *Bickley v. Schlag*, 46 N. J. Eq. 533; 20 Atl. 250; *S. R. C. S. Co. v. Rankin*, 45 Ill. Ap. 226; *Bruner v. Brown*, 139 Ind. 600; 38 N. E. 318; *Gilkie, etc. Co. v. D. T., etc. Co.*, 46 Neb. 333; 64 N. W. 978; *A. T., etc. Co. v. Hays*, 165 Pa. St. 489; 30 Atl. 936; *Jones v. Whitworth*, 94 Tenn. 602; 30 S. W. 736; *M. T. Co. v. S. C., etc. Co.*, 16 Wash. 499; 48 Pac. 333; *Taylor v. Cummings*, 127 Fed. 108.



faith rule" affords a satisfactory basis for determining all questions that may arise relative to the issuance of the capital stock of a corporation as full-paid and non-assessable in exchange for property transferred to it. In practice, neither the inequitable "true value rule" nor the fairer "good faith rule" will be found to rest on any satisfactory or substantial basis. Of late years, without in terms calling it by that particular name, courts of high repute have in substance adopted what will be termed here the "speculative value rule." This may be defined as that rule whereby a corporation is permitted, in issuing its capital stock as full paid and non-assessable in exchange for either real or personal property, to appraise the latter at its potential speculative value, looking towards its future development rather than at its present intrinsic value. The statement of the rule would be incomplete without adding that in all cases where such appraisal is questioned, the burden of proof of attacking the same is upon the creditor.

The rule in its practical application throws upon the creditor the burden of showing that, viewed from a purely speculative standpoint, the appraisal made by the corporation of such property constituted not merely an over-valuation, but a fraudulent over-valuation as well. Before attempting to discuss at length the "speculative value rule," as stated above, it might not be without its advantage to trace briefly those evolutionary steps along legal lines which appear to have paved the way for a fuller recognition on the part of the courts of the rule here contended for. In the first place, we have the enunciation by Justice Story, in 1824, of the now all but moribund "trust fund doctrine" already referred to.<sup>1</sup> Then ensued a period of years when the courts, one after another, proceeded to adopt the doctrine just mentioned, although it was unknown to the common law. Gradually, however, it came to be recognized that the trust fund theory was wrong in principle as well as inequitable, leading in its practical operations to harsh and unconscionable results. This gradually led to the adoption by many courts of a better and more enlightened doctrine which predicated the liability of stockholders to creditors, not upon the trust fund doctrine, but upon the sounder ground of fraud.<sup>2</sup>

<sup>1</sup> See *Wood v. Dummer*, 3 Mason, U. S. Justice Mitchell in *Hospes v. Company*, 48 Minn. 174; 50 N. W. 1117.

<sup>2</sup> See statement of this doctrine by

This was followed by the enunciation on the part of certain courts of several important rules governing the question of the burden of proof in cases where attempts were made by creditors to enforce an alleged stockholder's liability, on the ground that the property against which such stock had been issued had been grossly over-valued. A fair presentation of the rules here referred to may be found in the opinion of the Supreme Court of Minnesota, in *Hastings Malting Co. v. Iron Range Brewing Co.*,<sup>1</sup> reading as follows:

"In principle it can make no difference whether the stock issued as paid up is bonus stock, pure and simple, or whether it was sold for cash for less than its par value, or for property at a gross over-valuation. In the first two cases the question of fraud would be one of law, for on the issuing by the corporation of its stock as paid and its acceptance by the stockholders when in fact nothing was ever paid for it, or where a sum of money less than its par value was paid and accepted for it, there is no opportunity for a mistake of judgment; the law in such cases presumes an intention to defraud. Ordinarily, however, the question is one of fact.

"Upon principle and authority a corporation may in good faith issue paid up shares of its stock for the purchase of property at a fair valuation, and in such case the corporation and its creditors are bound by it.

"In the practical application of the rule it must be kept in mind that fraud, actual or constructive, is the basis of the stockholders' liability to the creditor. On the one hand, the value of the property is to be determined, not from subsequent events, but as of the time of the transaction, and from the nature, situation, and condition of the property as they honestly appeared to the parties at the time. Although there was in fact an over-valuation of the property, it will not render the stockholders liable for the deficiency if it was the result of an honest mistake or error of judgment. On the other hand, where the nature and condition of the property are such that its value is well known and understood, or is capable of being readily estimated and ascertained, and the property is transferred to the corporation at a gross over-valuation for paid-up shares, the transfer is *prima facie* fraudulent as to subsequent creditors, and as against them the burden is upon the shareholders to rebut the presumption."

It is a principle of law universally recognized that, except in cases of trust relationships, the burden of proof in all cases relative

<sup>1</sup> 65 Minn. 28; 67 N. W. 652.

to proof of fraud is cast upon the party who alleges that such fraud exists.<sup>1</sup>

By no stretch of the imagination can the relationship that exists between creditors of a corporation and the corporation itself be termed a "trust relationship." The relation is neither confidential nor fiduciary, as the same is construed by the courts.<sup>2</sup> There is no more reason for treating this relationship as one of trust than there is in the case of ordinary creditors and debtors. It was doubtless, however, as a sort of concession to the fanciful trust fund doctrine of Justice Story, that there early appeared a tendency, upon the part of certain courts, to engraft thereon the absurd principle that, where the board of directors of a corporation have duly appraised in the first instance property taken by the latter in exchange for its capital stock, the rule should obtain that where such property has a well known or easily ascertained value, and is taken at a valuation which to the court seems greatly in excess of its real value, then in such cases it will be presumed that such valuation is not made in good faith, but is made for a fraudulent purpose. To overcome this presumption the burden is upon the stockholders to introduce satisfactory evidence explanatory of this presumptively fraudulent over-valuation. Some courts even went further, and asserted that where the over-valuation was so great that the fraudulent intention appeared on its face and it is not explained, it should be held fraudulent as a matter of law, without submitting the question to a jury.

These drastic rules had full sway for a number of years, until certain of the courts saw fit to modify their rigor to no inconsiderable extent. Then the rule was enunciated that where stock has been paid for either in property or services, although it appears that there was an over-valuation in appraising the same, yet if it appears to the court not to be so gross and unconscionable as to compel it to say, as a matter of law, that it must have been intentional, it will be presumed that the valuation was honestly made, and the burden of attacking the same will be upon the creditors who seek to hold the stockholders upon an alleged stockholders' liability for unpaid stock subscriptions.<sup>3</sup>

<sup>1</sup> See *Phelan v. Hazard*, 5 Dil. 45; *N. E.* 725; *Davis Bros. v. Company*, 101 Bickley v. Schlag, 46 N. J. Eq. 533. *Ala.* 127; 8 S. W. 496; *Manhattan Trust*

<sup>2</sup> See *Robinson v. Pope*, 57 Cal. 496. *Co. v. Company*, 16 Wash. 499; 48 Pac.

<sup>3</sup> *Coleman v. Howe*, 154 Ill. 458; 39 333.

So much, then, for the historical development of the various doctrines relative to the subject matter now before us. Turning again to consider the "speculative value rule," the same must be looked at from two separate and distinct standpoints, to wit: (1) as dividing all properties which a corporation proposes to take over in exchange for its capital stock into two broad and well-defined classes, known respectively as "speculative" and "non-speculative" properties; (2) as establishing a rule for appraising the value of speculative properties based not upon the intrinsic value of the same, but rather upon their availability for purposes of speculation, looking towards an enhancement of their present value by the future expenditure of funds in the development thereof.

Let us now turn our attention to the classification of properties above referred to designated as "speculative" and "non-speculative." "Speculative" properties may be defined as those whose nature is such that they have not only a present intrinsic value, but a considerable potential value as well, speculative in its nature, and dependent upon future development in order to arrive at a definite estimation as to the amount thereof. Non-speculative properties, on the other hand, are those whose intrinsic worth alone gives them a market value or a value which can be easily ascertained by reference to well-recognized standards of value. In the first class of properties might be enumerated mining rights, patent rights, oil and gas lands, secret processes and trade secrets, patent medicines, etc. In the second class might be named real estate to be employed for business, dwelling, farming, and grazing purposes, stock in trade and personal property which is the common subject of bargain and sale between man and man at current prices, determined by the law of supply and demand. In the opinion of the Supreme Court of Minnesota, in *Hastings Malting Company v. Iron Range Brewing Company*, cited above, it will be noted that the rule that is to be applied in those cases where the nature and condition of the property are such that its value is well known or understood, or is capable of being readily estimated and ascertained, is clearly stated. The opinion, however, fails to state with equal clearness the rule that is to be applied where the value of the property is not of the character just described, but is of that type herein referred to as "speculative," having no present or well-known readily ascertained

value, but depending entirely upon future development in order to determine what such value may be. By implication only is the true rule in such cases suggested by the Minnesota court. However, in *Kelly v. Clark*,<sup>1</sup> the Montana Supreme Court in effect declares the rule in such cases to be that where the property is speculative in character, and as such the alleged over-valuation thereof may have been possibly due to errors in judgment, then the burden of proof is upon the creditors seeking to attack the valuation by showing actual fraud in the transaction.

Let us turn now to the question as to how the valuation of speculative properties is to be ascertained. Generally speaking, the rule to be adopted is this: "What, under all the circumstances, considering the proposed use to which it is to be put, and the general purpose for which the corporation was created, is the fair value of the property against which its capital stock is to be issued?"<sup>2</sup> In this age of speculative enterprises it is a matter of common knowledge that the value of properties taken over by corporations about to embark in speculative enterprises is dependent almost wholly upon their availability for the purpose in hand and upon the promise which external appearances give them as to their having a large and considerable potential value. Thus, for example, sixty square feet of land may have a very small intrinsic value when considered as farming, grazing, or residence property, and yet possess an immense potential value when treated as mining property. It is the expectation of success which induces investors to put their money into such enterprises, and which justifies a valuation far in excess of the property's intrinsic value. Such valuations, it must be admitted, are necessarily arbitrary in character. This fact the legislatures in many States have recognized, and the courts should not hesitate to do the same.<sup>3</sup>

The value of property which is transferred to the corporation is also not to be estimated by what it cost the promoter. It is the speculative and experimental results which afford a basis for the large valuation. By value in such cases is meant the speculative value for the uses and purposes of the company in its proposed speculative enterprise, and not the actual market value or the

<sup>1</sup> 21 Mont. 291; 53 Pac. 959.

<sup>2</sup> See Civil Code of Montana, 1895,

<sup>3</sup> See *Gamble v. Company*, 129 N. Y. § 410.  
91; 25 N. E. 201.

actual intrinsic value thereof at the time the properties are taken over by the company.

The view of the matter here presented was first suggested, it is believed, by the United States Circuit Court many years ago in the case of the South Mountain Consolidated Mining Co.<sup>1</sup> At the trial below in this case the court spoke as follows :

"The mode in which mining companies are formed is familiar to all. The owners of the property, or persons expecting to become such, by complying with a few simple formalities form themselves into a corporation, to which the property is conveyed. The amount of capital stock which is required to be stated in the certificate of incorporation is usually fixed at a purely arbitrary sum, and divided into as many shares as convenience or caprice may dictate. It neither bears nor is intended nor supposed by the public to bear the slightest relation to the real value of the property — a value nearly always conjectural and very often imaginary."

In this same case on appeal the court observed as follows :<sup>2</sup>

"The mode of forming mining corporations is well known to any body. A prospector finds, as he supposes, a valuable mine. It requires capital to work it which he does not possess. He goes to the money and business centres, where he finds capitalists accustomed to organize corporations for the development of new mines, and makes such arrangements as he can. He presents such evidence of the value of his mine as he has obtained. Little is known of the real value. It may be worth nothing and it may be worth millions. Parties are found willing to take hold of the enterprise. They agree to incorporate and fix the capital stock at some purely nominal amount, and divide it into a certain number of shares, corresponding to the amount of capital adopted. The owner of the mine, for an agreed number of shares and in consideration of the promises of the other parties to assist in the development of the mine, conveys the mine and receives for it the amount of stock agreed upon. The other parties, for their services in organizing and managing the company and its business, receive a large portion of the stock, this being usually a considerable amount of stock reserved by the company, which is put upon the market and sold for such price as can be obtained, to raise a fund to secure machinery and develop the mine. The price of this stock is of course determined by the prospect of the mine, its location, and its probable richness, and the confidence of the public reposed in

<sup>1</sup> 7 Sawyer, 30 ; 8 Sawyer, 366.

<sup>2</sup> 8 Sawyer, U. S. 366.

the experience, ability, and character of those having the management. Mining corporations are *sui generis*. They are organized and carried on upon principles wholly different from banking, railroad, insurance, and ordinary commercial corporations having a subscribed capital stock."<sup>1</sup>

But nowhere is the speculative element in the valuation of property better considered than by the Supreme Court of Pennsylvania, in the case of *Iron Co. et al. v. Hays et al.*<sup>2</sup> The facts in this case briefly stated are as follows:

A corporation was organized by two co-partners to take over certain lands owned or leased by them and believed to contain gas and oil. They capitalized the company for \$500,000, and issued the whole of its capital stock to themselves against the properties above referred to. These latter had an intrinsic value representing but a very small percentage of the capitalization of the company. The incorporators retained \$175,000 of the capital stock of the corporation for their own benefit, and transferred the balance to the corporation in trust to be sold by the board of directors thereof for the purpose of procuring working capital for the corporation. Later on, the lands proved to be practically worthless, and the company became insolvent, and creditors thereof sued the stockholders, alleging that the stock held by them had not been fully paid for. In passing upon the various legal questions involved, the court spoke as follows:

"Attention should be called first to the method of organization, to the facts showing the situation of the parties, the necessity for obtaining corporate powers, and the provision made for a working capital with which to enter upon the proposed corporate enterprise.

"The corporators had been partners. As such they had been engaged in procuring leases and drilling wells in search for oil. In their search they had not been successful, but two of the wells drilled by them proved to be valuable gas wells. This, taken in connection with other developments in the same general region, was well calculated to induce the belief that they were the possessors of a large and valuable gas territory that should be promptly developed and utilized or its value would steadily decline by reason of drainage from the operation of others. They could not utilize their gas without transporting it to a market. They could not transport it to advantage except as a natural gas company possessing the powers conferred by

<sup>1</sup> *In re South Mountain Con. Min. Co.*,      <sup>2</sup> 165 Pa. St. 489; 30 Atl. 936.  
8 Saw. 366.

law. This determined them to organize a corporation for the production and transportation of natural gas and to transfer their gas wells and leases to the corporation. When this had been decided on, the first question to present itself was, how shall the partnership convey its property to the corporation so as to secure to its members the same relative interest in the stock of the corporation they now have in the partnership property? The next question was, how shall we secure the necessary working capital to enable the corporation to go forward with the work of producing, transporting, and selling natural gas? In a general way these questions were answered by the adoption of the scheme already referred to. The value of the properties held by the firm was set down at \$175,000, the working capital needed at \$325,000. To meet both purposes the capital stock of the corporation was fixed at \$500,000. *It was all to be issued as paid up stock in exchange for the property conveyed to the corporation*, subject to the agreement that all except \$175,000 thereof was to be contributed to the treasury to be sold as a means of raising the money needed for a working capital. . . .

“In what respect, then, have the defendant stockholders failed in the performance of their undertaking to the corporation? The scheme was to turn over all the gas wells, leases, etc. to the corporation for \$175,000, and provide it with the means of prosecuting the gas business *by putting into its treasury paid up stock, or what should be sold as paid up stock*, to the amount of \$325,000 more. . . .

“The court below found ‘that the facts in evidence, connected with the fact that within a few months it was demonstrated that the property was of very small value, threw on the stockholders the burden of showing clearly that the sale from themselves to themselves was in good faith on a reasonable belief in the value of the property.’ *But what has the fact that, after some months spent in development of their territory, the corporation found itself disappointed in its productiveness and a heavy loser in consequence, to do with the good faith of their purchase or the reasonableness of the price?*

“*These are to be judged of by the facts before them when the arrangement was made. The character of the gas wells already opened, the extent of the territory covered by the leases, its relation to other developments, its nearness to an adequate market, and the probable duration of the supply within reach, were the considerations that would affect the judgment of buyers and sellers and of the business public as to its value. The subsequent disappointment must therefore be left out of the case, and the transaction examined in the light in which it was seen when the arrangement was entered into. When this is done and the absence of any suggestion or finding of fraud is remembered, it is not easy to see*



*what there is in the case to shift the burden of proof or to require the stockholders to establish the good faith of the transaction which the plaintiffs have not attacked.* The action proceeds on the theory that the subscriptions to the capital stock are wholly unpaid. The proofs show that they were paid exactly in accordance with the agreement, and that this payment had been recognized by the corporation from the first. The decree, as finally made, seems to rest on the conclusion that although paid they were paid in property which was taken at too high a price. It is true that no such thing was alleged in the bill or shown in the proofs, but if the value of the property is to be determined in the light of subsequent events, a light which the parties did not have when this sale was arranged, the conclusion of the court below would be reasonable. The trouble with it, however, is, that it rests on the intrinsic value of the property as ascertained by actual developments made after the sale, while the real question relates to the apparent value as indicated by the circumstances existing at the time of the sale. . . .

"We should agree with the court below that the property was sold at more than its actual value, if that value was to be determined by subsequent results rather than by prospects as they appeared at the time of sale. But if the parties were mistaken in relation to its value, we do not see how, in the absence of any averment of fraud in the transaction, the sale can be disregarded and the subscriptions to the capital stock treated as unpaid. The proofs show that they were paid exactly in accordance with the agreement under which they were made, and until that agreement is attacked as fraudulent, the creditors stand in no better position than the corporation itself. The decree is reversed so far as it requires payment of the stock subscriptions or any part thereof."<sup>1</sup>

So much, then, for the question as to the proper basis for appraising property of a speculative character when the same is transferred to the corporation in exchange for its capital stock. Let us add a few more words to what was said in the foregoing opinion relative to the question as to where the burden of proof lies in such cases, when the valuation placed upon the property is impeached by creditors who seek to enforce an alleged stockholder's liability for unpaid stock subscriptions. Let us note in this connection, first, the statement of the law made by the Court of Appeals of Maryland in *Brandt v. Ehlen*,<sup>2</sup> where the court observed "we take the law to be well settled, that a company

<sup>1</sup> See also *Kelly v. Clark*, 21 Mont. 291; 53 Pac. 959; *Montana Ry. Co. v. Warren*, 6 Mont. 275; 12 Pac. 641.

<sup>2</sup> 59 Md. 1.

may receive, in payment of the shares of its capital stock, any property which it may lawfully purchase. So long as the transaction stands unimpeached for fraud, the courts will treat as a payment that which the parties shall agree to be a payment, and this too in cases where the rights of creditors are involved." The Supreme Court of Massachusetts in a recent case<sup>1</sup> observed that it appears to be well settled that in the absence of fraud an agreement can ordinarily be made by which stockholders can be allowed to pay for their shares in patents, mines, or other property to which it is not easy to assign a determinate value. At least, one court of high authority has adopted the rule that where one becomes a creditor of a corporation knowing the manner in which its stock has been paid, he is deemed to waive his right to assert that there has been an over-valuation of the property against which the corporation issued its stock.<sup>2</sup> It is to go but a step forward to say that in the case of corporations engaged in speculative enterprises it is a matter of common knowledge that shares are to be paid for in property appraised at its potential rather than its present intrinsic value, and that therefore the rule stated above should obtain, even in the absence of actual knowledge on the part of creditors as to the manner in which the capital stock of the corporation had been issued. Again, where stock has been paid for by the conveyance of property to a corporation of the character known as "speculative" and upon which a valuation has been placed, — not its present intrinsic value, but rather its prospective value after development thereof, — then in such cases the courts should presume that the valuation was honestly made and place the burden upon the creditor of attacking the transfer.<sup>3</sup>

The ordinary practice, as has been observed, is for corporations engaged in non-speculative enterprises to issue stock for property which has a well-recognized market value or one which can be easily ascertained. In regard to such corporations, where the nature and condition of its property is such that its value is well known or understood or is capable of being readily estimated and ascertained, and the same is transferred to the corporation at a gross over-valuation for paid up shares, it would unquestionably be proper

<sup>1</sup> *N. H. H. N. Co. v. Company*, 142 Mass. 349, 7 N. E. 773.      <sup>8</sup> So. 496; *Coleman v. Howe*, 154 Ill. 458; 39 N. E. 725; *Carr v. Le Fevre*, 27

<sup>2</sup> *Callanan v. Windsor*, 78 Ia. 193; Pa. St. 489; *Shield v. Company*, 94 Tenn. 42 N. W. 652.      123; 28 S. W. 668.

<sup>3</sup> *Davis v. Company*, 101 Ala. 127;

for courts to treat such transactions as presumptively fraudulent, and to place the burden of proof upon the stockholders in such cases to rebut such presumption by clear and satisfactory proof. On the other hand, where the corporation is engaged in speculative enterprises of the character above referred to, and stock is issued against property accepted by the corporation at a valuation not based upon the present intrinsic value of the same, but avowedly (as is the universal custom) at its potential speculative value (to be determined after development thereof by the corporation which has acquired the property), then the practical attitude for the courts to take in such cases would be to adopt what is termed here the "speculative value rule," and to attach to the valuation placed by the corporation upon such property the presumption that it was honestly made, and place the burden of proof in such cases upon the creditor attacking the transaction. In practical operation it will be found that the shifting of the burden of proof would be equivalent in nearly all cases to making the valuation placed upon the property in any case, whether speculative or non-speculative in character, conclusive respectively upon the stockholders and the creditors. The reason of this is that in the case of non-speculative properties it is easy to demonstrate that the same has been grossly overvalued; as, for example, by showing the market value of the same. Again, in the case of speculative enterprises the same is true for the reason that the valuation placed upon the properties from a speculative standpoint, if honest and fair, would be such as to render it practically impossible as a matter of proof to show that such valuation was fraudulent or grossly overvalued, — this for the reason that in every such case it will be found that there exists an immense margin for honest difference of opinion, and although it may appear that there were serious errors of judgment, nevertheless it will be found in practice that such valuations should not and will not be set aside except for actual fraud.

It is the recognition of the necessity of shifting the burden of proof according to whether the property against which stock is issued is speculative in character or not, which, in connection with the basis of appraisal already referred to, affords a practical basis for the operation of the speculative value rule. Finally, the following may be said :

Upon principle and in the interest of justice both to the stockholders and creditors alike, in determining the question whether

stock has been in fact fully paid, the line should be drawn with the utmost clearness and distinctness between ordinary corporations such as trading, mercantile, banking, insurance, etc., whose capital stock is formally subscribed for and ordinarily paid in in cash or in real and personal property having a well-recognized or easily established market value on the one hand, and those corporations on the other hand incorporated for the express and avowed purpose of engaging in speculative enterprises — such, for example, as corporations organized to take over mining properties, oil and gas lands, patent and patent rights, secret processes, concessions, franchises, etc. In this era of speculative enterprises the courts can no longer remain blind to the fact that the stock of such corporations is not intended by the incorporators or understood by the creditors or the public generally to represent anything but certain property having a speculative value, which may or may not ultimately prove to be worth the par value of the stock against which the latter has been issued. The credit obtained by such corporations concerning which the courts have in the past displayed such intense solicitude in the interest of creditors to the exclusion of the interests of equally meritorious stockholders, is seldom, if ever, extended to the corporation without full knowledge on the part of creditors as to the nature of the assets of the corporation, or as to the manner in which the stock has been issued in exchange for property of a speculative value.

§ 107. **Effect of Appraisal of Property by Directors under Statutory Authority, when taken in Exchange for Stock.** — The incorporation acts of Connecticut, Delaware, Maine, Montana, New Jersey, New York, North Carolina, South Carolina, Virginia, and West Virginia all contain provisions relating to the effect of appraisal of property by directors when taken by the corporation in exchange for its capital stock. The provisions of the New Jersey act may be given as an example of such legislation. The statute referred to reads as follows: <sup>1</sup>

“Any corporation formed under this act may purchase mines, manufactories, or other property necessary for its business or the stock of another company or companies owning a mine, manufactory, or producing mills or other property necessary for its business, and issue stock to the amount of the value thereof, in payment therefor,

<sup>1</sup> Public Laws of New Jersey, 1896, chap. 85, § 49.

and the stock so issued shall be full-paid stock and not liable to any further call, nor shall the holder thereof be liable for any further payments under any of the provisions of this act, and in the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive."

In commenting upon the foregoing section in the case of *Donald v. American Smelting & Refining Co.*,<sup>1</sup> the court spoke as follows :

"The distinction between the contemplated issue of corporate stock for property and its issue for money lies not in the rule for valuation, but in the fact that different estimates may be formed of the value of property. When such differences are brought before judicial tribunals, the judgment of those who are by law entrusted with the power of issuing stock to the amount of the value of the property, and upon whom therefore is placed the first duty of valuing the property, may be accorded considerable weight. But it cannot be deemed conclusive when duly subjected to judicial scrutiny, nor is it necessary that conscious over-valuation or any form of fraudulent conduct on the part of its primary valuers should be shown to justify judicial interposition. Their honest judgment, if reached without due examination of the elements of value, or if based in part upon an estimate of matters which really are not property, or if plainly weighed by self-interest, may lead to a violation of the statutory rule as surely as would corrupt motives. The original issue of corporate stock is a special function in the exercise of which the legislature has fixed the standard to be observed, and it is the duty of the courts, so far as their jurisdiction extends, to see that this standard is not violated either intentionally or unintentionally. When corporate stock has once been issued for property purchased, then the legislature has directed the application of a different rule. In the words of the statute, 'the stock so issued shall be full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment under the provisions of this act ; and in the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive. Under these provisions, after the property has been purchased and the stock issued therefor, nothing short of actual fraud in the transaction can impair the right of the holder to hold his stock as full-paid stock, free from further call.' "

<sup>1</sup> 61 N. J. Eq. 458 ; 48 Atl. 786.

<sup>2</sup> See also *Wetherbee v. Baker*, 35 N. J. Eq. 501 ; *Bank v. Lumber Co.*, 32 W. Va. 357 ; 9 S. E. 243 ; *Richardson v. Graham*,

45 W. Va. 134 ; 30 S. E. 92 ; *Clark v. Bever*, 139 U. S. 96 ; 11 S. Ct. 468 ; *Fogg v. Blair*, 139 U. S. 118 ; 11 S. Ct. 496 ; *Liebke v. Knapp*, 79 Mo. 22.

§ 108. **Effect of Appraisal of Value of Property by State Officials when the same is taken by Corporations in Exchange for their Capital Stock.**—Owing to the conflicting decisions of the courts of the various States relative to what does and what does not constitute as against creditors full payment of the capital stock of a corporation, attempts have been made by the legislatures of a number of the States to remedy this situation by means of statutory enactments. Such legislative enactments may be said to be indicative of the public policy of the State in that regard. The “public policy of the State,” as the term is used in this connection, frequently varies from time to time. In the absence of express statutes of the character here referred to, it has been said that it is not to be measured by the private combinations or notions of the persons who happen to be exercising judicial functions, but by reference to the enactments of the law-making power, and in the absence of them to the decisions of the courts. When, however, the legislature has spoken on a particular subject and within the limits of its special powers, its utterance then becomes the public policy of the State.<sup>1</sup> In view of the fact that the near future is likely to see many attempts by other legislatures to solve the question here referred to by the enactment of statutes governing the same, the matter now under consideration should receive careful attention.

It is a fair supposition to say that the passage of such acts in this country originated doubtless in a desire to transfer to this country certain sections of what is known as the “English Company’s Act of 1867.” Under the act just referred to, corporations which desired to accept property in exchange for their capital stock were required to register in a designated government office a description of the property against which any particular corporation proposed to issue its full-paid shares. The construction by the English courts put upon this section of the English Company’s Act does not seem to give to the legislative provision referred to the full effect which is claimed for such statutes in this country. In substance the holding of the English courts in this regard is as follows:

That where the property is so registered under the act it is not unlawful for the vendor to sell such property to the corporation in

<sup>1</sup> See *MacGinniss v. Company* (Mont.), 75 Pac. 89; *United States v. Association*, 166 U. S. 290; 17 S. Ct. 540.

exchange for stock having a par value in excess of what the vendor paid for the property. That ordinarily the court will not in the interests of stockholders or creditors go behind the contract and inquire whether the consideration represents the full value against which the shares are issued unless the contract itself is impeached or the consideration on the face thereof appears to be insufficient or elusory.<sup>1</sup>

Turning now to the statutory enactments in this country of the same character, they may be explained as follows: In Florida the incorporation act there in force provides that incorporators may provide in the charter that the capital stock, either in whole or in part, shall be payable in property, labor, or services, at a valuation fixed in the charter. The latter must also contain a general description of the property to be taken in exchange for stock. In Utah the statute is very similar to the one in force in Florida. In Massachusetts the articles of organization must set forth the amount of capital stock to be issued, the amount thereof to be paid for in cash, and the amount thereof to be paid for in property. If such property consists of real estate, its location and the amount of stock to be issued therefor must be stated. If any part of such property is personal, it must be described in detail. The whole matter is then submitted to and passed upon by the commissioners of corporations. But the statute makes no provision relative to what the legal effect thereof shall be as to creditors where the issuance of stock in exchange for property is approved by the commissioners of corporations.

Unquestionably the most effective statute in existence is to be found in the Michigan act,<sup>2</sup> which in prescribing the requisites of articles of incorporation reads in part as follows: "The amount of capital paid in at the time of executing the articles, which shall not be less than ten per cent of the authorized capital, etc. Such capital stock may be paid in either cash or in other property, real or personal; but where payment is made otherwise than in cash there shall be included in the articles an itemized description of the property in which such payment is made, with the valuation for which such item is taken, which valuation shall be conclusive in the absence of actual fraud."

<sup>1</sup> *In re Wragg*, L. R. 1 Chan. 796;  
Oregon Gold Min. Co. v. Ropes, 61 L. J.  
Chan. 337.

<sup>2</sup> Session Laws of 1903, § 232.

The intent of the legislature would clearly appear to be to establish conclusively that the property received and accepted by the corporation under the authority of the State in exchange for its stock constituted a fair equivalent of the amount of stock so given. It would seem to forbid all claim of fraud thereafter to be made, and to establish the valuation as conclusive upon both stockholders and creditors.<sup>1</sup>

§ 109. **Meaning of Non-Assessable Stock.** — In entering upon the subject of non-assessable stock as contrasted with full-paid stock the discussion of the former will be confined to questions arising between the corporation and its stockholders, while the latter will be discussed from the standpoint of the stockholder in his relation to creditors. It is unquestionably within the power of a corporation to agree with stockholders that stock shall be issued to them at less than par, and that when so issued shall not be subject to any further assessments on the part of the corporation.<sup>2</sup>

In West Virginia, Nevada, Wyoming, and other States this principle has found recognition in the incorporation acts in force in those Commonwealths. The West Virginia act will serve as a fair example. The law there provides in substance as follows: that upon the vote of three-fourths of the stockholders corporate stock may be sold or disposed of at less than par. The act then goes on to provide that nothing therein contained shall be construed as to prevent any mining or manufacturing company from issuing stock and negotiating the sale of the same in payment of real and personal estate for the use of the corporation at such price and upon such terms and conditions as may be agreed upon by the owners and directors or stockholders of the corporation, and any subscriber to the capital stock of any such corporation may pay for the same by the transfer and conveyance to such corporation of real or personal property upon such terms as may be mutually agreed upon. All stock so issued shall be full paid and not liable to any further call or assessment.

Such a statute as is here referred to unquestionably has the effect of making the stock non-assessable as between the corporation and the subscribers to its capital stock, but it clearly has not the effect of preventing subsequent creditors in case of insolvency

<sup>1</sup> See *State v. Webb et al.*, 110 Ala. 214; 20 So. 462.

<sup>2</sup> *Esgen v. Smith*, 113 Iz. 25; 84 N. W. 954.



compelling the payment of any unpaid balance on such stock.<sup>1</sup> On this subject Judge Showalter, in *Northern Trust Co. v. Columbia Straw Paper Co.*,<sup>2</sup> spoke as follows :

“Whatever may have been in fact the value of the property turned over to the company for its stock, the latter agreed to take it for the stock. The persons interested were the stockholders, and there was no dissent on the part of any person in what was done. Neither any person then holding stock, nor any person who afterwards became a stockholder by assignment from one who then held the stock, can now make complaint on behalf of the corporation against the lawfulness of that transaction. This I take to be the settled law on that subject.”

In the absence of statutory authority conferred upon the corporation or in the absence of unanimous consent of all the stockholders, it is clear that the directors of a corporation have no power to assess shares which have been fully paid up.<sup>3</sup>

§ 110. **Meaning of Full-Paid Stock.** — The term “full-paid stock” as here used may be defined to be stock whose par value has been paid either in cash or in property, the ownership of which does not subject the holder thereof to any further liability either to the corporation or to the creditors. The mere declaration that stock is full paid, either by resolution or by stamping upon the stock this statement, does not make it so, at least as to creditors.<sup>4</sup>

It has already been said that stock may be issued for less than its par value to subscribers as full paid and non-assessable and be binding as between the corporation and the stockholders.<sup>5</sup> Where statutes exist declaring that stock issued in a particular manner shall be full paid and non-assessable, they are merely to be construed to the effect that stock may be issued in this manner, and that the holders thereof shall not be held liable to further calls or assessments on the part of the corporation, but such immunity

<sup>1</sup> The Wyoming statute would appear to be materially different from the West Virginia and Nevada acts. *Pacific Fruit Co. v. Coon*, 107 Cal. 447; 40 Pac. 542.

<sup>2</sup> 75 Fed. 936.

<sup>3</sup> *Wells v. Company*, 90 Wis. 442; 64 N. W. 69; *Ventura, etc. Ry. Co. v. Hartman*, 116 Cal. 260; 48 Pac. 65; *Handley v. Stutz*, 39 U. S. 417; 11 S. Ct. 530; *Gary v. Company*, 9 Utah, 464; 35 Pac. 494;

<sup>4</sup> *Upton v. Triplecock*, 91 U. S. 345; 23 L. E. 203; *F. N. Bank v. Company*, 42 Minn. 327; 44 N. W. 198; *National Tube Works v. Gilfillan*, 124 N. Y. 302; 26 N. E. 538; *Kroenert v. Johnston*, 19 Wash. 96; 25 Pac. 605.

<sup>5</sup> See *Scoville v. Thayer*, 105 U. S. 143.

will not be extended in such suit so as to prevent subsequent creditors enforcing their claims for the payment of the unpaid residue.<sup>1</sup> Many of the States have statutory provisions to the effect that no corporation shall issue stock except for money paid, labor done, or property actually received, declaring all fictitious increase of stock to be void. Under such provisions an original issue of stock as fully paid at less than par will be held to be void.<sup>2</sup>

Many cases will be found bearing upon the question as to the validity of so-called "bonus" or "promotion stock." In regard to the validity of such stock the courts differ. One line of decisions is represented by the courts of New York and Massachusetts. In *Christensen v. Eno*<sup>3</sup> the New York Court of Appeals spoke as follows:

"It may be admitted that the liability of subscribers on unpaid stock subscriptions constitutes an asset of the corporation which cannot be given up by the corporation without consideration on the part of creditors. The unissued shares of a corporation are not assets. When issued, they represent the proportionate interest of the shareholders in the corporate property, — an interest, however, subordinate to the claims of creditors. There are unquestionably public evils growing out of the creation and multiplication of shares of stock in corporations not based upon corporate property. The remedy is with the legislature. But the liability of a shareholder to pay for the stock does not arise out of his relation, but depends upon his contract, express or implied, or upon some statute, and in the absence of either of these grounds of liability, we do not perceive how a person to whom shares have been issued as a gratuity has by accepting them committed any wrong upon the creditors or made himself liable to pay the nominal face of the shares as upon his subscription or contract."<sup>4</sup>

On the other hand, courts of almost equal authority have refused to treat such stock in the interest of creditors as full paid and non-assessable, and have enforced in their favor an alleged stockholders'

<sup>1</sup> *Vt. Marble Co. v. Company*, 135 Cal. 624; 37 Pac. 638; *Kellerman v. Maier*, 116 Cal. 46; 48 Pac. 377; *Garrett v. Company*, 113 Mo. 330; 20 S. W. 965.

<sup>2</sup> *Williams v. Evans*, 87 Ala. 725; 6 So. 702; *Perry v. Mill Co.*, 93 Ala. 364; 9 So. 217; *Beitman v. Steiner*, 98 Ala. 241; 13 So. 87; *Stein v. Howard*, 65 Cal. 616; 4 Pac. 662; *Jefferson v. Hewitt*, 103 Cal. 624; 37 Pac. 638.

<sup>3</sup> 106 N. Y. 97; 12 N. E. 648.

<sup>4</sup> Same rule in *N. H. H. N. Co. v. Company*, 142 Mass. 349; 7 N. E. 773.

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liability thereon.<sup>1</sup> It has been held, however, that even though a stockholder has paid nothing for his stock, he is entitled to vote the same.<sup>2</sup>

<sup>1</sup> See *Peninsula Savings Bank v. Company*, 105 Mich. 535; 63 N. W. 514; 143; *Garrett v. Company*, 113 Mo. 330; *Handley v. Stutz*, 139 U. S. 417; 11 S. 20 S. W. 965.

<sup>2</sup> *Cartwright v. Dickinson*, 88 Tenn. 476; 12 S. W. 1030; *W. E. L. Co. v. Landy*, 66 Vt. 248; 29 Atl. 248; see also 65; *Rogers v. Gross*, 67 Minn. 224; 69 *Busey v. Hooper*, 35 Md. 15.

## CHAPTER V.

## LEGISLATIVE CONTROL OVER DOMESTIC CORPORATIONS.

§ 111. **Statement of Principal Methods by which Legislative Control over Domestic Corporations is obtained.**— Under our modern system legislative control over domestic corporations ordinarily takes the following forms, to wit: (1) control over amendment of corporate charters; (2) reservation on the part of the State of the right to repeal all charters; (3) control over dissolution of corporations; (4) by the exercise through State officials of the right to forfeit charters by means of *quo warranto* proceedings; (5) by means of the exercise of the police power; (6) through legislative investigation into corporate affairs; (7) by requiring annual reports of corporations; (8) by compelling corporations to permit inspection of their books and records for the benefit of stockholders and creditors; (9) by means of anti-trust legislation; (10) by the enactment of statutes regulating the internal affairs of the corporation; (11) by the imposition of liability upon stockholders for corporate debts over and beyond their liability for unpaid stock subscriptions; (12) enactment of statutes imposing liability upon directors for misfeasance or non-feasance in office; (13) by means of legislative control over the extension of corporate existence; (14) by the exercise of the right of taxation upon corporations; (15) by regulating the right of consolidation of corporations.

§ 112. **Amendment of Charters.**— A glance at the general business acts in force in the several States and Territories will serve to show that in all of them more or less attention has been paid by the legislatures to the question of the right to amend — with more or less freedom — articles of incorporation. In a majority of these the power of amendment will be found to be practically unlimited. In nine the limitations imposed are not wide in scope, while in eleven the power referred to may be characterized

as being very narrow in its practical operation.<sup>1</sup> The practical questions to be considered in this immediate connection have reference, first, to ascertaining in what body the legislatures have seen fit to place the power of amendment, and, secondly, an inquiry whether the power when granted, apparently in the broadest terms, is in legal effect without any limitations whatsoever.

As a general rule, the directors have no power to amend charters unless such right is expressly conferred upon them by statute. Power to amend resides exclusively in the stockholders.<sup>2</sup> Turning now to the second inquiry referred to above, the following may be said. With respect to the right on the part of majority stockholders to exercise the power of amendment, there are two practical views of the question which deserve consideration. The first has reference to the effect, if any, the exercise of such right may have upon the right of the corporation to enforce stock subscriptions which were made in reliance upon the corporate purposes set forth in the original charter. The other relates to the binding effect of such amendments, when had, upon dissenting minority stockholders who have previously paid up their stock subscriptions.

In the first case it appears to be the generally accepted view that when a party makes a subscription to the capital stock of a corporation he does it in reliance upon the implied understanding that no changes shall be made in the charter without his consent which produce material and fundamental changes therein.<sup>3</sup> The rule however can clearly not apply where the changes made were trifling or immaterial or were in furtherance of the original objects of the corporation.<sup>4</sup> There is a well-defined tendency at the present time on the part of many courts to take the view that in order that a subscriber to the capital stock may escape liability on his subscription on the ground that there has been a material amendment to the charter since his subscription was made, that

<sup>1</sup> See Part II., Synopsis-Digest of the Corporation Acts of the Several States, under the head "Amendments."

<sup>2</sup> *Gill v. Bayless*, 72 Mo. 424; *Ry. Co. v. Allerton*, 18 Wall. U. S. 233; *Ollesheimer v. Mfg. Co.*, 44 Mo. Ap. 172; *Clough v. Company*, 25 Col. 520; 55 Pac. 809; *State v. Oftedal*, 72 Minn. 488; 75 N. W. 692; *Commonwealth v. Cullen*, 13 Pa. St.

133; *Abbott v. Company*, 33 Barb. (N. Y.) 583.

<sup>3</sup> *Mowrey v. Company*, 4 Bissell (U. S.), 78; *Printing House v. Trustees*, 104 U. S. 711.

<sup>4</sup> *Fry's Executors v. Company*, 2 Metcalf (Ky.), 322; *Peoria v. Preston*, 35 Ia. 115; *Milford, etc. Turnpike Co. v. Brush*, 10 O. St. 111; *Durfee v. Company*, 5 Allen (Mass.), 230.

such amendment must necessarily have brought about changes of the most radical and fundamental character.<sup>1</sup>

Turning now to the second question here referred to, the following may be said. Important questions frequently arise as to the right of majority stockholders to amend the charter of the corporation against the dissent of minority stockholders so as practically to create an entirely new corporation with purposes and powers wholly different from those conferred in the original charter.

Before the passage of the modern liberal amendment acts, specifically authorizing majority stockholders to change *ad libitum* corporate purposes and powers, the rule undoubtedly was that majority stockholders had no power to depart, under the guise of an amendment to the charter, from the objects for the accomplishment of which the corporation was created. At that time majority stockholders would be enjoined on the application of minority stockholders from making fundamental and radical changes in the original corporate purposes, which had the effect of practically creating a new corporation, with power to engage in lines of business wholly foreign to that set forth in the original charter.<sup>2</sup> But whatever the rule may have been in times past, changed conditions have brought about material modifications therein.

Owing to the recent statutory enactments in the great majority of the Commonwealths relative to amendment of charters, it may be said that this question has ceased to be one of great practical importance at the present time, however it may have been in the past. In view of these statutory provisions it may be said that as a general rule the extent of the power of amendment when exercised by a majority of the stockholders according to the statute in such case made and provided, depends entirely upon the terms of such statute and the construction given by the courts thereto.<sup>3</sup> If broad

<sup>1</sup> Banet v. Company, 13 Ill. 504; Pacific Ry. Co. v. Renshaw, 18 Mo. 210; Sprague v. Company, 19 Ill. 174; Irvine v. Turnpike Co., 2 Pen. & W. (Pa.) 466; Cross v. Company, 90 Pa. St. 392; Troy, etc. Ry. Co. v. Kerr, 17 Barb. (N. Y.) 607; Worcester v. Company, 109 Mass. 103; Del. Ry. Co. v. Tharp, 1 Houst. (Del.) 149.

<sup>2</sup> Zahriskie v. Company, 18 N. J. Eq. 178; Stevens v. Company, 29 Vt. 545;

Natusch v. Irving, 1 Smith's Cases, 226; Union Locks and Canals v. Towne, 1 N. H. 44; Ashton v. Burbank, 2 Dill. 435; Fed. Cases No. 582; H. & N. H. Ry. Co. v. Croswell, 5 Hill (N. Y.), 383.

<sup>3</sup> Day v. Company, 75 Ia. 694; 38 N. W. 113; Golder v. Bressler, 105 Ill. 419; Sprigg v. Company, 46 Md. 67; Hope Mutual Fire Ins. Co. v. Beckman, 47 Mo. 93; Detroit Chamber of Commerce v. Secretary of State, 109 Mich. 691; 67

in scope, they unquestionably permit majority stockholders to bring about radical and even fundamental changes in corporate purposes and powers if they so desire.

The question here presented is one of so much practical importance that it deserves more attention than has been yet given it. The New York Court of Appeals in *Buffalo & New York City Railroad Co. v. Dudley*<sup>1</sup> laid the foundation for the establishment in that State of the present just rule that there obtains with reference to the right of majority stockholders to materially change the corporate purposes against the dissent of minority stockholders. In that case the court permitted a change of name and an extension of the line of the railway by means of an amendment to the original charter. In passing upon this point the court spoke as follows:

“The stock subscription having been valid so as to give a right of action in case of non-payment to the corporation, did the alteration of the charter and the extension of the road subsequently absolve the defendant from his liability upon such subscription? The right to alter was reserved in the charter, and the subscription must be taken to have been made subject to having such additional powers conferred as the legislature might deem essential and expedient. The change is not fundamental. The new powers conferred are identical in kind with those originally given. They are enlarged merely, the general objects and purposes of the corporation remaining still the same. It may be admitted that under this reserved power to alter and repeal the legislature would have no right to change the fundamental character of the corporation and convert it into a different legal being, for instance, a banking corporation, without absolving those who did not choose to be bound. But this they have not attempted to do. The additional powers are of the same character and have been regularly acquired from a legitimate source of power, and if they had been fairly exercised the defendant, although the change may have operated to his pecuniary disadvantage, is still bound by his undertaking. The whole matter is manifestly a question of power; and if the power was legitimately acquired and has been exercised without fraud, the rights of the parties are in no respect changed as between themselves whether the alteration is beneficial or injurious to the defendant's interest.

N. W. 897; *Mercantile Statement Co. v. Green*, 116 Mich. 505; 74 N. W. v. Kneal, 51 Minn. 263; 53 N. W. 632; 714.

<sup>1</sup> 14 N. Y. 342.

Whether he has made or lost by the change in no respect affects the question of authority in the plaintiff."

Many years later this same court, in discussing the respective rights of majority and minority stockholders or corporations, spoke as follows :

"The court would not be justified in interfering even in doubtful cases, where the action of the majority might be susceptible of different constructions. To warrant the interposition of the court in favor of the minority shareholders in a corporation or joint-stock association, as against the contemplated action of the majority, where such action is within the corporate powers, a case must be made out which plainly shows that such action is so far opposed to the true interests of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that he must have acted with an intent to subserve some outside purpose, regardless of the consequences to the Company and in a manner inconsistent with its interests. Otherwise the court might be called upon to balance probabilities of profitable results to arise from the carrying out of the one or the other of different plans proposed by or on behalf of the different shareholders in a corporation, and to decree the adoption of that line of policy which seemed to it to promise the best results, or at least to enjoin the carrying out of the opposite policy. This is no business for any court to follow."<sup>1</sup>

It is difficult to find a better presentation of the more modern and better view taken of the question now under discussion than that to be found in the opinion of the Massachusetts Supreme Court in *Durfee v. Old Colony & Fall River Railway Company*.<sup>2</sup> While the case had special reference to the right of a State legislature to exercise its reserved right to amend corporate charters so as to produce radical changes in the purposes named in the original charter, nevertheless the reasoning is equally applicable to those cases where majority stockholders attempt equally radical amendments under general acts permitting such stockholders to amend charters on their own initiative.

"We suppose," said Chief Justice Bigelow in the case referred to, "it may be stated as an indisputable proposition, that every

<sup>1</sup> *Gamble v. Company*, 123 N. Y. 91;      <sup>2</sup> 5 Allen, 230.  
25 N. E. 201.



person who becomes a member of a corporation aggregate by purchasing and holding shares agrees by necessary implication that he will be bound by all acts and proceedings, within the scope of the powers and authority conferred by the charter, which shall be adopted or sanctioned by a vote of the majority of the corporation, duly taken and ascertained according to law. This is an unavoidable result of the fundamental principle that the majority of the stockholders can regulate and control the lawful exercise of the powers conferred on a corporation by its charter. A holder of shares in an incorporated body, so far as his individual rights and interests may be involved in the doings of the corporation, acting within the legitimate sphere of its corporate power, has no other legal control over them than that which he can exercise by his single vote in the meetings of the company. To this extent he has parted with his personal right or privilege to regulate the disposition of that portion of his property which he has invested in the capital stock of the corporation, and surrendered it to the will of a majority of his fellow corporators. The *jus disponendi* is vested in them so long as they keep within the line of the general purpose and object for which the corporation was established, although their action may be against the will of a minority however large. It cannot, therefore, be justly said that the contract, express or implied, between the corporation and the stockholders is infringed or impaired by any act or proceeding of the former which is authorized by a majority, and which comes within the terms of the original statute creating and establishing their franchise, and conferring on them capacity to exercise control over the rights and property of their members. On the contrary, the fair and reasonable implication resulting from the legal relation of the stockholders and the corporation is, that the majority may do any act either coming within the scope of the corporate authority, or which is consistent with the terms and conditions of the original charter, without and even against the consent of an individual member." Again, in this same opinion the court observed that, "in creating a corporation, no contract is made by the legislature with the individual members or stockholders, any further than they are represented by the artificial body which the act of incorporation calls into being. They have no other rights except those which exist or grow out of the constitution of the body corporate of which they are members. To

this can we only look, in order to ascertain whether there has been any breach of contract or violation of chartered rights. It constitutes, of itself, the contract by which the rights of all parties are to be governed. When, therefore, it is expressly provided between the legislature on the one hand and the corporation on the other, as part of the original contract of incorporation, that the former may change or modify or abrogate it or any portion of it, it cannot be said that any contract is broken or infringed when the power thus reserved is exercised with the consent of the artificial body of whose original creation and existence such reservation formed an essential part. The stockholder cannot say that he became a member of the corporation on the faith of an agreement made by the legislature with the corporation, that the original act of incorporation should undergo no change except with his assent. Such a position may be asserted with more plausibility, if there was an absence of a clause in the original act of incorporation providing for an alteration in its terms. In such a case it might perhaps be maintained that there was a strong implication that the charter should remain inviolate, and that the holders of shares invested their property in the corporation relying upon a contract entered into between it and the legislature that the provisions of the act creating it should remain unchanged. But it is difficult to see how such a construction can be put on a contract which contains an express stipulation that it shall be subject to amendment and alteration. If it be asked by whom such amendment or alteration is to be made, the answer is obvious: by the parties to the contract, the legislature on the one hand and the corporation on the other; the former expressing its intention by means of a legislative act, and the latter assenting thereto by a vote of the majority of the stockholders, according to the provisions of its charter. It is nothing more than the ordinary case of a stipulation that one of the parties to a contract may vary its terms with the assent of the other contracting party. In such case, all persons claiming derivative rights or interests under the original contract, with notice of its terms, would be bound by the amendment or alteration to which the parties should agree. It is a mistake, therefore, to say that the contract of a stockholder with a corporation established under our statutes binds the latter to undertake no new enterprise and engage in no business or operation other than that contemplated by the original

charter. This interpretation puts aside the express provision authorizing an amendment or alteration of the act of incorporation, and gives it no effect as against a stockholder without his assent, although he bought his stock or subscribed for his shares subject to the legal effect of such a stipulation. The real contract into which the stockholder enters with the corporation is, that he agrees to become a member of an artificial body which is created and has its existence by virtue of a contract with the legislature, which may be amended or changed with the consent of the company, ascertained and declared in the mode pointed out by law. Having, by virtue of the relation which subsists between himself and the corporation as a holder of shares, assented to the terms of the original act of incorporation, he cannot be heard to say that he will not be bound by a vote of the majority of the stockholders accepting an amendment or alteration of the charter made in pursuance of an express authority reserved to the legislature, and which by such acceptance has become binding on the corporation."

In some few of the States, as for example Ohio,<sup>1</sup> the law provides that no amendment shall change substantially the original purposes of the organization. In many of the States great similarity is to be observed in the formalities necessary to be taken in order to legally amend the charter. Usually the matter is brought to the attention of the stockholders by a resolution passed by the board of directors directing the calling of a meeting of the stockholders for the purpose of passing upon certain proposed amendments. A meeting of the stockholders is then called in the manner prescribed by statute, if any, or according to the method set forth in the by-laws. If the requisite number of stockholders vote in favor of such amendment, a certificate to that effect is usually made by the officers of the corporation and filed in the same offices as is required in the case of the original articles of incorporation. Thereupon the amendment ordinarily becomes effective. If the statute does not prescribe the method of amending the charter, the only safe plan to pursue is to adopt substantially the same procedure therefor as is prescribed by statute in the case of original articles.<sup>2</sup>

<sup>1</sup> See Revised Statutes of Ohio, sec. 3258a; also *State v. Taylor*, 55 O. St. 61; *N. W.* 113. *Picard v. Hughey*, 58 O. St. 577.

<sup>2</sup> *Day v. Company*, 75 Ia. 694; 38

§ 113. **Reserved Right of the State to repeal Charters.** — Without exception, under the system of incorporation now in vogue, each of the several States and Territories reserves the right in the granting of corporate charters under general acts to alter, amend, or repeal the same at any future time. The presence of such enactments is due to the decision of the United States Supreme Court in *Dartmouth College v. Woodward*,<sup>1</sup> wherein that tribunal announced the principle that the charter of a private corporation was entitled to protection from alteration, amendment, or repeal on the part of State legislatures under the clause of the Federal Constitution forbidding impairment of the obligation of contracts. When this case was decided, it became obvious at once that “many acts of incorporation which had been passed as laws of a public character, partaking in no general sense of a bargain between the States and the corporations which they created, but which yet conferred private rights, were no longer subject to alteration, amendment, or repeal except by the consent of the corporate body, and that the general control which the legislatures creating such bodies had previously supposed they had the right to exercise, no longer existed.” It was no doubt with a view to suggesting a method by which the State legislatures could retain in a large measure this important power without violating the provisions of the Federal Constitution, that Justice Story, in his concurring opinion in the *Dartmouth College Case*, suggested that, “when the legislature was enacting a charter for a corporation, a provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, and the subsequent exercise of the right would be in accordance with the contract and could not therefore impair its obligation.”<sup>2</sup>

With respect to the right to repeal, the power of the legislature in this regard, when exercised, is all but absolute, and the courts ordinarily will not inquire into the legislative motive for exercising it. Under such circumstances it will be presumed that the power is properly exercised.<sup>3</sup> The only exception appears to be that the courts will interfere where the legislature has exercised its power of repeal so wantonly and causelessly as palpably to violate the principles of natural justice.<sup>4</sup>

<sup>1</sup> 4 Wheaton, 518, decided in 1819.

*Wagner Free Institution v. Philadelphia*,

<sup>2</sup> *Greenwood v. Company*, 105 U. S. 132 Pa. St. 612.

13. <sup>4</sup> *Lothrop et al. v. Stedman et al.*, Fed.

<sup>3</sup> *Greenwood v. Company*, 105 U. S. 13; Cases, No. 8519.

Another question, however, is presented when the legislature attempts to alter or amend the charter. In order to justify the exercise of this power by the legislature the same must be so exercised as not to defeat or substantially impair the object of the grant or any rights vested under it which the legislature may deem necessary to secure either that object or some public right.<sup>1</sup> From the foregoing it is to be seen that the reserved power to repeal and alter is not unlimited. On this subject the U. S. Supreme Court, in *Union Pacific Railroad Co. v. United States*,<sup>2</sup> spoke as follows:

“That the power to alter or amend a charter even when reserved has a limit no one can doubt. All agree that it cannot be used to take away the property already acquired under the operation of the charter or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made. It may safely be affirmed that the reserve power may be exercised to almost any extent to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of stockholders and creditors, and for the proper distribution of its assets. Also to protect the rights of the public and of the incorporators or to promote the due administration of the affairs of the corporation. The alterations must, however, be reasonable. They must be made in good faith, and be consistent with the object and scope of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of alteration or amendment.”

**§ 114. Legislative Control over Dissolution of Corporations.**—Legislative control over dissolution of domestic corporations (omitting any reference to forfeiture of charters by State action,) is exercised in the following four ways: (1) by prescribing the maximum duration of corporate charters; (2) by permitting corporations to surrender their charters before organization; (3) by authorizing voluntary dissolution, with or without recourse to the courts; (4) by enacting statutes authorizing involuntary dissolution on application of stockholders or creditors. Each of these matters will now be taken up briefly for discussion.

(1) **Legislative limitations upon corporate duration.** In the absence of any provision in the governing statute or in the charter limiting corporate duration, the corporation is entitled to perpetual

<sup>1</sup> *N. Y. & N. E. Railway Co. v. Town of Bristol*, 151 U. S. 556.      <sup>2</sup> 99 U. S. 700.

existence.<sup>1</sup> The legislature may however, if it sees fit, limit the duration of corporate existence to any specific number of years. This right has been exercised in a majority of the States.<sup>2</sup> Upon expiration of the period of time limited in the charter as the duration of corporate life, dissolution results by operation of law.<sup>3</sup> If the articles provide for a longer period of duration than the law allows, then the excess is of no force or effect.<sup>4</sup>

In many of the States statutes exist continuing the existence of corporations after the expiration of the period limited in their charters for certain periods of years in order to permit them to close up their corporate affairs. Such statutes may be lawfully enacted subsequent to the creation of the corporation, for the reason that they provide for the enforcement of rights which equity recognizes even in the absence of statute.<sup>5</sup>

(2) Surrender of charter before organization. Statutes exist in the States of Connecticut, Delaware, Maine, Massachusetts, Nevada, New Jersey, New York, North Carolina, Virginia, West Virginia, and Wisconsin expressly permitting corporations to surrender their charters either prior to organization or to the commencement of corporate business. It is unquestionably true that in order to render such a surrender valid it must have been made under authority of the statutory provision enacted, which is of course equivalent to acceptance by the State.<sup>6</sup>

(3) Voluntary dissolution with or without recourse to the courts. "Charters," it has been said, "are in many respects compacts between the government and the corporators. And as the former cannot deprive the latter of their franchises in violation of the compact, so the latter cannot put an end to the compact without the consent of the former. It is equally obligatory on both parties. The surrender of a charter can only be made by some formal act of the corporation, and will be of no avail until accepted by the government. There must be the same agreement of the parties to dissolve that there was to form the compact. It

<sup>1</sup> *F. L. & S. Co. v. Clowes*, 3 N. Y. 470.

<sup>2</sup> See Part III. Table 13, page 583.

<sup>3</sup> *Mason v. Company*, 25 Fed. 882; *Bradley v. Reppell*, 133 Mo. 545; 32 S. W. 645.

<sup>4</sup> *People v. Cheeseman*, 7 Col. 376; 3 Pac. 716.

<sup>5</sup> *Foster v. Bank*, 16 Mass. 245; *Singer*

*v. Hutchinson*, 183 Ill. 605; 56 N. E. 388.

<sup>6</sup> *Taylor v. Holmes*, 14 Fed. 98; *Revere v. Company*, 15 Pick. (Mass.) 351; *Combes v. Keyes*, 89 Wis. 297; 62 N. W. 89; *Law v. Rich*, 47 W. Va. 634; 35 S. E. 858; *Mariners v. Sewall*, 50 Me. 220; *Barton v. Association*, 114 Ind. 226; 16 N. E. 486.

is the acceptance which gives efficiency to the surrender. Dissolution of a corporation extinguishes all its debts. The power of dissolving itself by its own act would be a dangerous power, and one which cannot be supposed to exist."<sup>1</sup>

The foregoing statement of the law is unquestionably based upon both reason and authority. Accordingly, a corporation may dispose of all its assets, cease entirely to do business, and neglect to elect officers or hold meetings of any kind, yet it cannot be legally dissolved by any action of its stockholders or a surrender of its charter unless such surrender is authorized by some statute.<sup>2</sup>

Where statutes exist authorizing dissolution of corporations prior to the termination of the period limited in their charters, such statutes are of course equivalent to an acceptance by the legislature of the surrender of the charter. All that is necessary is that the statute shall be substantially complied with in order that the dissolution may be effective.<sup>3</sup>

It may be remarked, in passing, that no cessation or abandonment of its corporate business, failure to hold corporate meetings or to elect officers, alienation or loss of all its property, has the effect in law of dissolving the corporation.<sup>4</sup>

(4) Involuntary dissolution on application of stockholders and creditors. Most of the States have enacted statutes giving courts possessing equitable powers the right to wind up corporations for cause shown upon application of some stockholder or on petition of creditors. But such proceedings, even when the corporation is insolvent, do not necessarily dissolve the corporation, unless the statute that is invoked expressly so provides.<sup>5</sup>

It has been expressly held that corporations are not dissolved by

<sup>1</sup> *Boston Glass Manufactory v. Langdon*, 24 Pick. 49; see also *Olds v. Company* (Mass.), 70 N. E. 1022.

<sup>2</sup> *Everetts v. Company*, 20 Conn. 448; *Rorke v. Thomas*, 56 N. Y. 559; *People v. Ballard*, 134 N. Y. 269; 32 N. E. 54; *Commonwealth v. Silfer*, 53 Pa. St. 71; *Wilson v. Proprietors, etc.*, 9 R. I. 590; *State v. Association*, 35 O. St. 258.

<sup>3</sup> *Commonwealth v. Slifer*, 53 Pa. St. 71; *In re Lincoln Co.*, 190 Pa. St. 124; 42 Atl. 538; *Wilson v. Proprietors, etc.*, 9 R. I. 590.

<sup>4</sup> *People v. B. & R. T. Road*, 23 Wend.

222; *Boston Glass Manufactory v. Langdon*, 24 Pick. (Mass.) 49; *Kincaid v. Dwinelle*, 59 N. Y. 548; *Jones v. Edson*, 10 Kan. Ap. 110; 62 Pac. 249; *State v. Trustees*, 5 Ind. 44; *Wilmington & Reading Ry. Co. v. Downward* (Del.), 14 Atl. 720; *Muscatine Turnverein v. Funck*, 18 Ia. 469; *U. S. v. Company*, 1 Fed. 700; *Bradley v. McKee*, 5 Cranch C. C. 298; *Fed. Cases*, No. 1784.

<sup>5</sup> *Sprague Brimmer Mfg. Co. v. Company*, 26 Fed. 572; *Stolze v. Company*, 100 Wis. 208; 75 N. W. 987; *Olds v. Company* (Mass.), 70 N. E. 1022.

statutory proceedings in bankruptcy or insolvency, or by appointment of receivers in equity or by assignment for the benefit of creditors.<sup>1</sup>

§ 115. *Forfeiture of Charters.*—At common law forfeiture of charters was accomplished by means of *scire facias*, or by an information by the proper State officials in the nature of a writ of *quo warranto*.<sup>2</sup> “An information for the purpose of dissolving a corporation or of seizing its franchises,” it has been said, “cannot be brought except by the authority of the Commonwealth, exercised by the legislature or by the attorney or solicitor-general acting under its direction or *ex officio* in its behalf. For the Commonwealth may waive any provision of any condition, express or implied, on which the corporation was created; and courts cannot give judgment for the seizure by the Commonwealth of the franchises of any corporation unless the Commonwealth be a party in interest to the suit and assents to the judgment.”<sup>3</sup>

A corporation cannot within the meaning of the law forfeit its rights and seal up the corporation. A corporation without rights, without legal capacity to do anything, not even to acquire rights, is an impossibility. It has never been seriously contended that mere non-performance of conditions subsequent on the part of a corporation has the effect *ex proprio vigore* to put an end to corporate life. By such non-performance the corporation is not *ipso facto* dissolved or deprived of its corporate existence or corporate rights, but it is simply exposed to proceedings in behalf of the State to establish and enforce a forfeiture. The State which gave the corporate life may take it away. The State which imposed the conditions may waive their performance, and the corporate life may run on until the State by proper proceedings (ordinarily *quo warranto*, or in the nature of *quo warranto*) interposes and enforces a forfeiture.<sup>4</sup>

Courts of equity have no inherent jurisdiction, in the absence of statute conferring the same, to decree a dissolution of a corporation or declare a forfeiture of its charter on any grounds.<sup>5</sup>

<sup>1</sup> *Chamberlain v. Company*, 118 Mass. 532; *Taylor v. Company*, 14 Allen (Mass.), 353; *Montgomery v. Merrill*, 18 Mich. 338; *Boston Glass Manufactory v. Langdon*, 24 Pick. (Mass.) 49; *Central Nat. Bank v. Company*, 104 U. S. 54.

<sup>2</sup> *Rex v. Pasmore*, 3 Term Reports, 199; *Slee v. Bloom*, 5 Johnson's Chan. N. Y. 366; *W. & B. T. Co. v. Maryland*, 19 Md. 239.

<sup>3</sup> *Commonwealth v. Company*, 5 Mass. 230.

<sup>4</sup> *Matter of Brooklyn Elevated Ry. Co.*, 125 N. Y. 434; 26 N. E. 474.

<sup>5</sup> *Wheeler v. Company*, 143 Ill. 197; 32 N. E. 420; *Denike v. Company*, 80



The principal grounds under the statute upon which charters will be forfeited may be enumerated as follows: (1) non-user of corporate franchises; (2) mis-user or abuse of corporate powers; (3) for non-performance of conditions precedent to valid existence as a corporation; (4) for non-performance of conditions subsequent to valid continuance of existence as a corporation; (5) for violation of express statutes; (6) for non-payment of taxes; (7) for insolvency. These will now be taken up briefly for separate consideration.

(1) *Forfeiture for non-user of corporate franchises.* It is a well-established doctrine of the law that courts should proceed with extreme caution in proceedings which have for their object the forfeiture of corporate franchises; nor should such a penalty be visited except for plain abuse of power by which the corporation fails to fulfil the designs and purposes of its organization.<sup>1</sup> Again it has been well said: "It is not every failure to perform a duty imposed that will work a forfeiture. It must be something more than accidental negligence, something more than an excess of power, something more than a mere mistake in the mode of executing the acknowledged powers; and though a single act of simple non-feasance may be a ground of forfeiture, a specific act of non-feasance not committed wilfully and not producing or tending to produce mischievous consequences to any one, and not being contrary to formal regulations of the charter, will not be."<sup>2</sup>

All these judicial utterances are little more than a declaration of the fact that the policy of the State, of its officers and courts should be to encourage in all legitimate ways the organization and operation of all corporations organized to promote any legitimate enterprise. "The rights, privileges, and franchises of such corporations," it has been well said, "should not be declared forfeited, and they should not be ousted and excluded therefrom, except for solid, weighty, and cogent reasons, for the violation of a positive or prohibitory statute and not of a statute whose provisions are permissive and apparently directory, and never upon mere technical grounds."<sup>3</sup>

The term "forfeiture of charter for non-user of corporate franchises," as here used, has a very broad signification. It N. Y. 599. See however *Miner v. Company*, 93 Mich. 97; *Arents v. Company*, 101 Fed. 138.

<sup>1</sup> *State v. Chemical Bank*, 10 O. St. 535.

<sup>2</sup> *State v. Company*, 8 R. I. 182.

<sup>3</sup> *Moore v. State*, 71 Ind. 478.

may have reference to action taken by the State with a view to forfeiture of corporate charters on any one of the following grounds: failure to organize the corporation within the time prescribed by statute;<sup>1</sup> failure to carry on the business enumerated in its articles;<sup>2</sup> failure to elect officers;<sup>3</sup> failure to maintain domiciliary office within the State;<sup>4</sup> failure to commence business within the time designated by statute.<sup>5</sup>

(2) *Forfeiture for misuse or abuse of corporate powers.* "To work a forfeiture on the ground of misuser or abuse of corporate powers, there should not only be a wrong, but one arising from wilful abuse or improper neglect. The corporate default must be something more than accidental negligence or mere mistaken excess of power, or mistake in the mode of exercising an acknowledged power. There must be an abuse of trust, of such a nature as would render a trustee liable to forfeit his station on the complaint of his *cestui que trust* if the question stood on the relation between them. Corporations are political trustees. Have they fulfilled the purposes of their trust or acted in good faith with a view to fulfilment? is the question to be asked when they are called upon to forfeit their charter, either for acts of commission or omission."<sup>6</sup>

"It appears to be settled," observed the New York Court of Appeals, "that the State as prosecutor must show on the part of the corporation accused some act against the law of its being which has produced or tends to produce injury to the public. The transgression must not be merely formal or accidental, but material and serious, and such as to harm or menace the public welfare. For the State does not concern itself with the quarrels of private litigants. It furnishes for them sufficient courts and remedies, but interferes only where some public interest requires its action. Corporations may and often do exceed their authority where only private rights are affected. But when the transgression has a wider scope and threatens the welfare of the people, they may summon the offender to answer for the abuse of its franchises or the violation of its corporate duty."<sup>7</sup>

<sup>1</sup> *State v. Simonton*, 78 N. C. 57.

<sup>5</sup> *W. F. C. F. Co. v. Kittridge*, 5 Saw. 44;

<sup>2</sup> *W. C. M. Co. v. Burns*, 114 N. C. 353; *People v. Bank*, 129 Ill. 618; 22 N. E. 288. 19 S. E. 238.

<sup>6</sup> *People v. B. & R. T. Road*, 23 Wend. 222.

<sup>3</sup> *State v. Barron*, 58 N. H. 370.

<sup>4</sup> *State v. Company*, 58 Minn. 330; 59 N. W. 1048; *State v. Company*, 59 Kan. 151; 52 Pac. 422; *State v. Company*, 45 Wis. 579.

<sup>7</sup> *People v. Company*, 121 N. Y. 582; 24 N. E. 834; see also *M. O. & R. R. Co. v. Cross*, 20 Ark. 443.

(3) *Forfeiture for non-performance of conditions precedent.* Even a corporation defectively organized may have what is termed a "*de facto* existence," so that it cannot ordinarily be impeached by parties other than the State. Nevertheless the right to bring proceedings to forfeit the charter of such corporation vests with the State which may bring proceedings to forfeit the same and oust it from the exercise of corporate powers.<sup>1</sup>

(4) *Forfeiture for non-performance of conditions subsequent.* It has been well settled that charters of corporations may be forfeited by proper action brought by the State for failure to comply with conditions subsequent which are clearly mandatory and not merely directory in their nature.<sup>2</sup>

(5) *Forfeiture for violation of express statute.* This is one of the clearest grounds for the exercise by the State of its right to forfeit charters. The most common ground for the exercise thereof is in connection with anti-trust legislation.<sup>3</sup>

(6) *Forfeiture for non-payment of taxes.* Several of the States authorize forfeiture of charters for non-payment of organization and annual franchise taxes. This right has been exercised with great frequency, and constitutes unquestionably a valid exercise of the power of such legislature over corporations.<sup>4</sup>

(7) *Forfeiture for insolvency.* In the absence of statutory provision to that effect, insolvency alone will not authorize the State to forfeit corporate charters.<sup>5</sup> However, it is unquestionably valid for a State to prescribe that if a corporation be insolvent for a certain length of time it shall constitute a forfeiture of its charter.<sup>6</sup>

§ 116. *The Police Power of the State.* — The police power of the State comprehends all those general laws of internal regulation which are necessary to secure the peace, good order, health, and

<sup>1</sup> *Holman v. State*, 105 Ind. 569; *People v. City Bank*, 7 Col. 226; 3 Pac. 214.

<sup>2</sup> *State v. Company*, 1 Tenn. Cases, 511; *People v. Company*, 131 N. Y. 140; *Hammond v. Strauss*, 53 Md. 1.

<sup>3</sup> *Simmons v. Company*, 113 N. C. 147; *State v. Company*, 24 Texas, 80; *Huyler v. Company*, 40 N. J. Eq. 392; *People v. Company*, 60 How. Pr. 82; *People v. Company*, 130 Ill. 268; *State v. Standard Oil Co.*, 49 O. St. 137; *People v. Company*, 121 N. Y. 582; see also *People v. Cham-*

*bers*, 42 Cal. 201; *People v. Bank*, 129 Ill. 618; 22 N. E. 288; 24 N. E. 834.

<sup>4</sup> *Hughesdale Mfg. Co. v. Vanner*, 12 R. I. 491; *Bank v. Company*, 17 Ap. Div. (N. Y.) 524.

<sup>5</sup> *People v. Bank*, 6 Cowen (N. Y.), 211; *A. & L. T. Co. v. Holthouse*, 7 Ind. 59; *State v. Bank*, 13 Smeads & M. (Miss.) 569; *Chicago Life Ins. Co. v. Needles*, 113 U. S. 574.

<sup>6</sup> *People v. Bank*, 12 Mich. 526; *C. M. L. & I. Ass'n v. Hunt*, 127 Ill. 257; *Denike v. Company*, 80 N. Y. 599.

comfort of society, but the proper limit in its bearing upon charter rights and privileges of private corporations for public uses would seem to be this : That the legislature may at all times regulate the exercise of the corporate franchises by general laws passed in good faith for the legitimate ends contemplated by State police power ; that is, for peace, good order, health, comfort, and welfare of society ; but it cannot under the color of such laws destroy or impair the franchises itself, or any of the rights or powers which are essential to the exercise of it.<sup>1</sup>

After the decision of the United States Supreme Court in *Dartmouth College v. Woodward*,<sup>2</sup> that court proceeded to enunciate the doctrine that in the exercise of what is termed "police power," the several States might pass laws as a valid exercise of such powers when otherwise they would be forbidden to do so under Section 10, Article 1, of the Constitution of the United States, which forbids the impairing of the obligations of contracts by means of laws enacted by them.

The police power arises primarily from the nature of the social contract, just as when each person upon becoming a member of a society must of necessity relinquish some of the rights and privileges which, as an individual and considered alone, he might retain. The Supreme Court of Massachusetts in *Commonwealth v. Alger*<sup>3</sup> says : "All property is subject to such reasonable restrictions and regulations established by law as the legislature under the governing and controlling power vested in them by the Constitution may think necessary and expedient."

In *Gibbons v. Ogden*<sup>4</sup> the United States Supreme Court held that the police power is lodged with the several States. In *Provident Bank v. Billings*<sup>5</sup> the court took another step forward, and held that the abandonment on the part of the State of its power of regulation in this regard ought never to be presumed in any case where the purpose of the State to abandon it does not clearly appear.

In the License Cases<sup>6</sup> the court held that, in the exercise of its police power, a State may pass quarantine and sanitary laws damaging and even destroying property in some cases. In *Bartemeyer v. Iowa*<sup>7</sup> the court held that a State law prohibiting the manufac-

<sup>1</sup> *P. W. B. R. Co. v. Bowers*, 4 Hous-  
ton, Del. 506.

<sup>2</sup> 4 Wheat. 518.

<sup>3</sup> 7 Cush. 84.

<sup>4</sup> 9 Wheat. 1.

<sup>5</sup> 4 Peters, 514.

<sup>6</sup> 5 Howard, 404.

<sup>7</sup> 18 Wal. 133.

ture and sale of intoxicating liquors was a valid exercise of the police power. In *Beer Company v. Massachusetts*<sup>1</sup> the court held that as a measure of police regulation, looking to the preservation of public morals, a State law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States.

In *Mugler v. Kansas*<sup>2</sup> it was held that a State may absolutely prohibit the manufacture and sale of intoxicating liquors as a beverage, and may declare places where such liquors are manufactured or sold to be nuisances, and may authorize the destruction of such liquors found therein, and of all property used in keeping and manufacturing such nuisances. Such a statute is valid as to such liquors lawfully manufactured before the enactment of the statute, and although it greatly deteriorates the value of the property lawfully used in such manufacture before the enactment of the statute.

In *Munn v. Illinois*<sup>3</sup> it was held that when the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest submit to be controlled by the public for the common good as long as he maintains the use.

In *Fertilizing Company v. Hyde Park*<sup>4</sup> the right of State authorities to compel the removal of a bone fertilizing business from a location near the village to a point farther removed, was held to be valid as an exercise of the police power.

In the *Slaughter House Cases*<sup>5</sup> the court held that the power of State legislatures to make a contract of such a character that under the provisions of the Constitution it cannot be modified or abrogated does not extend to subjects affecting public health and public morals, so as to limit the further exercise of legislative power over those subjects, to the prejudice of the general welfare.

To summarize briefly the general doctrine of the federal Supreme Court on this subject, the same may be done by presenting the following abstract propositions:

(1) Laws for the welfare and safety of a community being essential to the existence of every State, it cannot be supposed to have been within the intention of the original thirteen States to limit this power by assenting to the Federal Constitution.<sup>6</sup>

<sup>1</sup> 97 U. S. 25.

<sup>2</sup> 123 U. S. 623.

<sup>3</sup> 94 U. S. 113.

<sup>4</sup> 97 U. S. 659.

<sup>5</sup> 111 U. S. 746.

<sup>6</sup> *Louisville & N. R. Co. v. Kentucky*, 161 U. S. 677; 40 L. E. 849.

(2) Generally speaking, the extent to which a State can regulate the business or affairs of a corporation depends upon the nature of the business — whether it affects the public closely or remotely. If it is of such a character or magnitude that the public are directly interested in its proper management, then it falls within the proper sphere of legislative control.<sup>1</sup>

(3) Being an inherent right as well as a duty, the legislature may pass enactments looking towards the safety of life and property, and general laws of this nature are a legitimate exercise of the “police power.” Thus it may compel railroads to fence tracks, maintain cattle guards, put up signboards at crossings, construct viaducts, require all trains to stop at intersections of railroads, etc.<sup>2</sup>

(4) Laws intended to prevent or remove nuisances are clearly within the “police power” of the State.<sup>3</sup>

(5) A State may pass laws for the protection of its inhabitants against the evils of intemperance, even though existing contracts be affected thereby.<sup>4</sup>

(6) Laws regulating the employment of persons of a certain age in manufactories are a valid exercise of the general power of the State to enact laws to secure the health and education of the community.<sup>5</sup>

(7) A State may by statute protect the interest of employees when the common law affords no protection; as for example, a law providing that all railroad companies shall be liable for wages due to day laborers employed by contractors engaged to construct the company’s railroad and works was held to be valid.<sup>6</sup>

(8) A State may by general laws regulate the use and disposition of property within its jurisdiction, although existing incorporated companies be thereby affected.<sup>7</sup>

(9) A State may pass laws for the protection of the morals

<sup>1</sup> *Munn v. Illinois*, 94 U. S. 113; 24 L. E. 629; *Mugler v. Kansas*, 123 U. S. 77; *Pearsall v. Company*, 161 U. S. 646; 40 L. E. 838.

<sup>2</sup> *Reid v. Colorado*, 187 U. S. 137; 47 L. E. 108; *Smith v. Company*, 181 U. S. 248; 45 L. E. 847.

<sup>3</sup> *Slaughter House Cases*, 16 Wall. 36; 21 L. E. 394.

<sup>4</sup> *Reymann Brewing Co. v. Brister*, 179 U. S. 445; 45 L. E. 269; *Rhodes v. State of Iowa*, 170 U. S. 412; 42 L. E. 1088; *Foster v. Kansas*, 112 U. S. 201;

28 L. E. 629; *Mugler v. Kansas*, 123 U. S. 623.

<sup>5</sup> *Knoxville Iron Co. v. Harbison*, 183 U. S. 13; 46 L. E. 55.

<sup>6</sup> *Knoxville Iron Co. v. Harbison*, 183 U. S. 13; 46 L. E. 55; *Butchers’ Union, etc. v. Company*, 111 U. S. 746; 28 L. E. 585; *Dent v. West Virginia*, 129 U. S. 114; 32 L. E. 623; *Holden v. Hardy*, 169 U. S. 366; 42 L. E. 780.

<sup>7</sup> *Budd v. New York*, 143 U. S. 517; 36 L. E. 247.

of its citizens, even though vested corporate rights be thereby affected.<sup>1</sup>

§ 117. **Legislative Investigation into Corporate Affairs.** — The statutes of California, Michigan, Minnesota, North Dakota, Oklahoma, South Dakota, and Wisconsin contain express provisions for the appointment of legislative committees to examine into the affairs of corporations organized under their laws. The provisions of the South Dakota act may be quoted as exemplifying the nature of such statutory provision. It reads as follows :

“The legislative assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this State at all times ; and for that purpose any committee appointed by the said assembly, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and conditions thereof ; and may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any circuit court or any judge thereof, under such rules and regulations as the court may prescribe.”<sup>2</sup>

Such an inquiry as is authorized by the statutes just referred to has been held not to constitute a judicial act, and is therefore considered a valid exercise of legislative powers.<sup>3</sup> On this particular subject the Supreme Court of Massachusetts spoke as follows :

“The inquiry into the affairs or defaults of a corporation with a view to continue or discontinue it, is not a judicial act. No issue is framed. No decree or judgment is passed. No forfeiture is adjudged. No fine or imprisonment is imposed. But an inquiry is had in such form as is deemed most wise and expedient, with a view to ascertaining facts upon which to exert legislative power or to learn whether a contingency has happened upon which legislative action is required.”<sup>4</sup>

§ 118. **Legislative Requirement of Annual Reports from Corporations.** — Statutes exist in thirty-three of the Commonwealths

<sup>1</sup> Austin v. Tennessee, 179 U. S. 343 ; 45 L. E. 224 ; Petit v. Minnesota, 177 U. S. 164 ; 4 L. E. 716 ; Hannington v. Georgia, 161 U. S. 299 ; 41 L. E. 166 ; L'Hote v. New Orleans, 77 U. S. 587 ; 44 L. E. 899.

<sup>2</sup> Sec. 478, Rev. Civ. Code ; sec. 2970, Comp. L.

<sup>3</sup> Lothrop v. Stedman, 42 Conn. 583 ; Fed. Cas. No. 8519.

<sup>4</sup> Crease v. Babcock, 23 Pick. 344.

requiring annual reports from domestic corporations.<sup>1</sup> The validity of such statutes was considered by the Supreme Court in the case of *Eagle Insurance Company v. State of Ohio*.<sup>2</sup> The court in its opinion therein spoke as follows :

“The right of the plaintiff in error to exist as a corporation and its authority in that capacity to conduct the particular business for which it was created were granted subject to the condition that the privileges and franchises conferred upon it should not be abused or so employed as to defeat the ends for which it was established, and that when so abused or misemployed they might be withdrawn or reclaimed by the State in such way and by such modes of procedure as were consistent with law. Although no such condition is expressed in the plaintiff's charter, it is implied in every grant of corporate existence. Equally implied in our judgment is the condition that the corporation shall be subject to such reasonable regulations in respect to the general conduct of its powers as the legislature may from time to time prescribe which do not materially interfere with or obstruct the substantial enjoyment of the privileges the State has granted only to secure the ends for which the corporation was created. If this condition be not implied, then the creation of corporations with rights and privileges which do not belong to individual citizens may become dangerous to the public welfare through the ignorance or misconduct or fraud of those to whose management their affairs are entrusted. It would be extraordinary for the legislative department of a government, charged with the duty of enacting such laws as may promote the health or morals or prosperity of the people might not when unrestrained by constitutional limitations upon its authority, provide by reasonable regulations against the misuse of special corporate privileges which it has granted, and which could not except by its sanction, express or implied, have been exercised at all.”

The conclusion of the court in the case just referred to was that the charter of the corporation did not exempt it from obligations to comply with the subsequently established police regulations of the State, requiring certain corporations to make annual statements of their condition.

**§ 119. Inspection of Corporate Books.**—In all the Commonwealths but five statutes have been enacted requiring the keeping of certain corporate books and giving to stockholders, and sometimes to creditors as well, the right to inspect the same. At

<sup>1</sup> See Part III. Table 7, page 577.

<sup>2</sup> 153 U. S. 446.



common law stockholders had the right to inspect books and papers of the corporation at reasonable times and for a proper purpose.<sup>1</sup> Creditors had no such common law rights.

On this subject the New York Court of Appeals in the Matter of Steinway<sup>2</sup> spoke as follows:

"The elementary works unite in holding that the incorporator has the right in question and that mandamus is the proper remedy. We think that according to the decided weight of authority a stockholder has the right at common law to inspect the books of his corporation at a proper time and place and for a proper purpose, and that if this right is refused by the officers in charge, writ of mandamus may issue in the sound discretion of the court with suitable safeguards to protect the interests of all concerned. It should not be issued to aid a blackmailer, nor withheld simply because the interest of the stockholder is small, but the court should proceed cautiously and discreetly, according to the facts of the particular case. To the extent, however, that an absolute right is conferred by statute, nothing is left to the discretion of the court but the writ to issue as a matter of course, although even then doubtless due precautions may be taken as to time and place so as to prevent interruption of business, or other serious inconvenience. We do not think, however, that the statute now in force in this State is exclusive, or that it has abridged the common law right of stockholders with reference to the examination of the corporate books. By enabling the stockholder to get some information in a new way, it did not impliedly repeal the common law rule, which enabled him to get other information in another way, for the courts do not hold the common law to be repealed by implication unless the intention is obvious. By simply providing an additional remedy the existing remedy was not taken away. The statute merely strengthens the common law rule with reference to one part thereof, and left the remainder intact."

The right of inspection of corporate books is not the inspection of the idle, the impertinent, or the curious, but an inspection with a laudable object to accomplish, or a real and actual interest upon which is predicated the request for information disclosed by the books.<sup>3</sup>

<sup>1</sup> *People v. Eadie*, 63 Hun, 320; 133 N. Y. 573; *Burham v. Company*, 76 Cal. 24; 17 Pac. 940; *Phoenix Iron Co. v. Commonwealth*, 113 Pa. St. 563; *Hemingway v. Hemingway*, 58 Conn. 443.

<sup>2</sup> 159 N. Y. 250.

<sup>3</sup> *State ex rel. Bourdette v. Company*, 49 La. Ann. 1556; 22 So. 815.

The purpose of requiring a copy of stock books and books of account at the corporation's domiciliary office is to protect the rights of stockholders and to aid the State in exercising its visitatorial powers, or to enable creditors or stockholders to ascertain the number of shares standing in the names of each so as to levy execution and attachment thereon. The mere fact that a domestic corporation has kept its books in another State when required by law to keep its books at its domiciliary office, is not a ground for dissolving the corporation when parties entitled to inspection of such books have never been refused the right to inspect the same at the domiciliary office.<sup>1</sup>

§ 120. **Anti-Trust Legislation.**— The term “trust” includes any form of combination or combinations between corporations or between corporations and individuals for the purpose of regulating production and repressing competition by means of the power thus centralized.<sup>2</sup>

Under the common law agreements, pools, trusts, or combinations between persons or corporations looking towards any absolute restraint of trade or to regulate prices or to promote monopolies, were against public policy, and as such were unlawful and void. But when the question of public policy is at issue, certain matters should be noted.

It has been well said “that the public policy of the State varies from time to time. It is not to be measured by the private combination or combinations of the persons who happen to be exercising judicial functions, but by reference to the enactment of the law-making power, and in the absence of them to the decisions of the courts. When, however, the legislature has spoken upon a particular subject and within the limits of its constitutional powers, its utterance is the public policy of the State.”<sup>3</sup>

Congress dealt with illegal trade combinations in relation to interstate commerce as early as 1887, when it passed the Interstate Commerce Act, and later on, July 2, 1890, it passed what is known as the “Sherman Anti-Trust Act.” Since that time thirty-three of the States have passed more or less stringent anti-trust acts.<sup>4</sup> All this legislation has been framed with the same purpose.

<sup>1</sup> *Ribling Stock Co. v. People*, 147 Ill. 234; 35 N. E. 608.

<sup>2</sup> *MacGinniss v. Company* (Mont.), 75 Pac. 89.

<sup>3</sup> *MacGinniss v. Company* (Mont.), 75 Pac. 89; *United States v. Association*, 166 U. S. 290; 41 L. E. 1007.

<sup>4</sup> See Part III. Table 3, page 573.

In some of these acts an arbitrary distinction is made between dealers and producers. Such provisions have under certain circumstances been declared to be "class legislation," and as such are invalid under the Fourteenth Amendment to the Federal Constitution.

Under this principle the anti-trust acts of Illinois and Texas have recently been declared to be unconstitutional.<sup>1</sup>

In the note below will be found the dates of the passage of the earlier anti-trust acts in the several States.<sup>2</sup>

§ 121. *Regulation of Internal Affairs.* — In many of the States the regulation of the internal affairs of corporations has been largely delegated by statute to the corporations themselves. Such is the case in Alabama, Connecticut, Delaware, Iowa, Maryland, Massachusetts, New Jersey, Nebraska, New York, North Carolina, South Carolina, Tennessee, Utah, Virginia, West Virginia, and Wisconsin.

In other of the Commonwealths, without express provision of law permitting the same, State officials allow clauses for the regulation of the internal affairs of the corporation to be incorporated in articles of incorporation filed with them. As an

<sup>1</sup> *Connolly v. Union S. P. Co.*, 184 U. S. 540; 46 L. E. 679; *State v. Shippers & Compress Warehouse Co.*, 95 Texas, 603; 69 S. W. 58; *Ford v. Association*, 155 Ill. 166; 39 N. E. 651; *Harding v. Company*, 182 Ill. 551; 55 N. E. 577. See also *Northern Securities Co. v. United States*, 193 U. S. 197.

<sup>2</sup> The Federal Anti-Trust Act commonly known as "the Sherman Act" was approved July 2, 1890. The following is a list of the States wherein anti-trust legislation of a more or less comprehensive character was passed, together with the date the same went into effect:

Alabama, Insurance Act, Feb. 18, 1897; Arkansas, Anti-Trust Act, Mar. 16, 1897; California, Cattle Trust Act, Feb. 27, 1893; Delaware, Life Insurance Act, Feb. 15, 1891; Florida, Trade in Cattle, June 11, 1897; Georgia, Anti-Monopoly Act, Dec. 23, 1896; Illinois, Prohibitory Pools, Trusts, and Combinations, Original Act, July 11, 1891, amended June 10, 1897; Indiana, Mar. 5, 1897, General Anti-Trust; Iowa, General Anti-Trust, May 6, 1890; Kansas, Mar. 8, 1897, defines a trust in five sec-

tions; Kentucky, General, May 20, 1890; Louisiana, General went into effect July 7, 1892; Maine, General, Mar. 7, 1889; Michigan, became a law July 1, 1889; Minnesota, April 20, 1891; Mississippi, Part of the Code of the General St. Laws of Mississippi adopted in 1892, and amended March 11, 1896; Missouri, Original Act, April 2, 1891, revised under Act of April 11, 1895, and revised again March 24, 1897; Montana, Annotated Code of 1895, secs. 321-325; Nebraska, Act of April 8, 1897; New Mexico, Feb. 4, 1891; New York, May 7, 1897; North Carolina, March 11, 1889; North Dakota, March 9, 1897; Oklahoma, Dec. 25, 1890; South Carolina, Feb. 25, 1897; South Dakota, March, 1, 1897; Tennessee, April 6, 1889 amended March 30, 1891; Texas, Original Act, March 30, 1889, amended April 30, 1895; Utah, March 9, 1896; Washington, Con., Art. XII. sec. 22, and also Act of March 21, 1895, Session Laws, 1895, chap. cxlviii.; Wisconsin, April 27, 1897. (See "Biography of Commercial Trusts," by Wm. H. Winters, Librarian of the N. Y. Law Institute in 1890.)

example of the statutes above referred to, attention is called to the provisions of the New Jersey Act, which reads as follows :

“The certificate of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting, and regulating the powers of the corporation, the directors, and the stockholders or any class or classes of stockholders.”<sup>1</sup>

Without such statutory authority State officials are unquestionably justified in refusing to allow articles of incorporation to be filed containing such clauses as are here referred to.<sup>2</sup>

The Court of Appeals of New York in an early case, commenting upon the legal effect of the insertion of provisions in the articles not authorized by the incorporation act, spoke as follows :

“The want of authority for this provision would not affect the validity of the corporation. The articles must contain the statements affirmatively required by the act, because those statements constitute the conditions precedent to the right of the company to become incorporated. If unauthorized provisions are added, all the acts done pursuant to such provisions will be void, but until the company is proceeded against for abuse of its franchises its rights as a corporation will not be affected by such unauthorized provisions.”<sup>3</sup>

The more modern view in regard to such matters is that where State officials are either expressly or impliedly empowered to pass upon the validity of articles of incorporation submitted to them with a view to filing in their office, the approval of such State official once obtained renders such clauses as are here referred to valid as against all but the State, even when their insertion in the articles is not expressly authorized.<sup>4</sup>

§ 122. **Liability of Stockholders for Debts of the Corporation.** — The general subject of stockholders' liability may be best discussed under three heads : (a) Liability for unpaid stock subscriptions ; (b) Double liability as established by statute in certain

<sup>1</sup> New Jersey Session Laws of 1896, chap. 185, sec. 8, subdivision 7.

<sup>2</sup> Eastern Plank Road Co. v. Vaughan, 14 N. Y. 551.

<sup>3</sup> *In re Stevedores' Beneficial Ass'n*, 14 Phila. Pa. 130; see ante, sec. 5.

<sup>4</sup> See ante, sec. 6.

States; (c) Special liability as established by statute in certain States.

(a) Liability for unpaid stock subscription. The statutes which exist in nearly every Commonwealth in the Union making stockholders liable for unpaid stock subscriptions are merely declaratory of the common law.<sup>1</sup> The liability of stockholders of corporations for unpaid stock subscriptions with reference to creditors is oftentimes confused with their liability to the corporation itself. The latter liability is directory and the right to enforce it may be waived by the corporation. In the absence of such waiver the subscribing stockholders are bound by the contract of subscription to pay the full value of their shares in such instalments and in such manner as may be prescribed by the laws of the State or by-laws of the corporation. In such cases the liability may be enforced by the ordinary remedies. The corporation usually has a lien upon the stock, and may sell the same in satisfaction of the debt, and may collect the deficiency, if any, by action against the delinquent stockholders.

On the other hand, as the corporation is a legal entity distinct from the stockholders who constitute it, no debts or obligations incurred by it can, in the absence of a direct statutory provision, impose any lawful liability upon the stockholders. But in equity, under what is termed the "trust fund doctrine," the debts of the stockholders to the corporation are regarded as equitable assets of the corporation and may be reached by the creditors if the legal assets prove insufficient. This trust fund doctrine derives its main support at the present time from the Supreme Court of the United States, but it has secured recognition in many jurisdictions.

As stated in *Sanger v. Upton*,<sup>2</sup> "The capital stock of an incorporated company is a fund set apart for payment of its debts. It is publicly pledged to those who deal with the corporation for their security. Unpaid stock is as much a part of this pledge, and as much a part of the assets of the company as the cash which has been paid in.

"The stockholders thus become individually liable for the debts of the corporation, to the extent of the unpaid balance on their stock. They are also in some States subject to other statutory liabilities hereinafter set forth. The statutory remedy is usually by equitable action, but in some States by an action at law.

<sup>1</sup> *Taylor v. Cummings*, 127 Fed. 108.

<sup>2</sup> 91 U. S. 60.

Under nearly all such statutory provisions, the liability of stockholders is intended merely as a secondary security for creditors in case the assets of the corporation are insufficient to meet its debts, but in special cases stockholders may be made parties defendant in an original action, and if they are obliged to pay any debt of the corporation they may bring an action against the corporation for the amount so paid, and are usually entitled also to exact contribution from the other stockholders."

The only other questions which are of practical importance in connection with the present subject may be restricted to two classes: one relates to the liability for unpaid stock subscriptions to creditors as between the transferor and the transferee, and the other relates to the liability to creditors of pledgees and trustees of stock.

With reference to the first question it may be said that the question depends upon the law of the State in which the stockholder may reside and in which action may be brought.<sup>1</sup> In most States transferors of stock are not subject to stockholders' liability, and are thereafter released from liability for assessments made by the corporation.<sup>2</sup>

In the absence of statutory provision to the contrary, a *bona fide* transfer of stock perfected on the books of the corporation, discharges the transferor from any further liability either to the corporation or to creditors for calls made after the transfer and for calls made prior thereto, and the transferee takes his place and becomes liable for calls made after the transfer but not for calls made before.<sup>3</sup> The distinction which clearly obtains between one who holds his stock by transfer and one who is an original subscriber to the stock of the corporation, must be carefully noted. The former may in good faith discharge himself from liability for unpaid instalments by due transfer of his shares, while the latter cannot obtain immunity in this way. The subscriptions for stock and the acceptance of a certificate for the shares constitute a contract between the subscriber and the corporation by which he engages to pay the remaining instalments on demand from the corporation. From this agreement the subscriber cannot recede without the consent of the corporation.<sup>4</sup> In some of the States

<sup>1</sup> Glenn v. Hunt, 120 Mo. 330; 25 S. W. 181. also Signa Iron Co. v. Brown, 171 N. Y. 488; 64 N. E. 194.

<sup>2</sup> M. L. T. Co. v. Ward, 13 Ohio, 120.

<sup>4</sup> Hood v. McNaughton, 54 N. J. Law,

<sup>3</sup> Pullman v. Upton, 96 U. S. 328; see 425; 24 Atl. 497.

this matter is regulated by statute. In Maine, Massachusetts, North Carolina, West Virginia, the original subscriber alone is liable. In Illinois, Iowa, Nebraska, New Hampshire, Rhode Island, and Virginia the original subscriber remains liable as well as the transferee.<sup>1</sup> In Georgia, Ohio, Tennessee, and Oregon the original subscriber is liable upon default in payment by the transferee. In Mississippi and Wisconsin the original subscriber remains liable for the debts contracted before his ownership or those contracted thereafter. In California, Indiana, Kentucky, Maryland, Michigan, Minnesota, New York, and Tennessee the original subscriber remains liable for the debts of the corporation contracted during his ownership and not for debts contracted after such transfer. In Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Missouri, Montana, New Jersey, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, and Wyoming upon the transfer of stock the transferee becomes liable for all debts contracted both before and after transfer, and the transferor is discharged in all these States as to debts contracted after such transfer, and in some of these States from liability for debts contracted before such transfer as well.<sup>2</sup>

Turning now to the question of liability of pledgees and trustees of stock, it may be said that unless protected by statute, as is the case in New York, Missouri, California, and Michigan, the prevailing rule seems to be that pledgees and trustees of stock are liable thereon to the extent of the unpaid portion of the stock held by them.<sup>3</sup>

On the other hand the Supreme Court of the United States has enunciated a different doctrine to the effect that a pledgee of stock taken as collateral security or as a loan is not subject to personal liability for the debts of the corporation imposed on other shareholders unless he has either become the owner of the shares in fact or has held himself out to be the owner, and thereby estopped himself from denying his personal liability as such.<sup>4</sup>

<sup>1</sup> *White v. Greene* (Iowa), 70 N. W. 182; *Sprague v. Bank*, 172 Ill. 149; 50 N. E. 190.

<sup>2</sup> *Van Cott v. Van Brunt*, 82 N. Y. 535.

<sup>3</sup> *Hole v. Walker*, 31 Ia. 344; *Union Savings Ass'n v. Seligman*, 92 Mo. 635;

65 S. W. 630; *Germania National Bank v. Case*, 99 U. S. 628; *McMahon v. Macy*, 51 N. Y. 155.

<sup>4</sup> *Rankin v. F. I. T. & D. Co.*, 189 U. S. 242.

(b) Double liability as established by statute in certain States. What is known as the "double liability" of stockholders for debts of the corporation which existed formerly in a large number of States, has now been so far removed by statute that it exists at the present time in the case of ordinary business corporations in only two States, to wit, California and Minnesota.<sup>1</sup> In the last-mentioned State it does not exist in the case of corporations organized exclusively for the purpose of carrying on a manufacturing, mining, or mechanical business.<sup>2</sup>

(c) Special liability as established by statute in certain States. Stockholders at common law were not liable for debts of the corporation beyond their liability for unpaid stock subscriptions.<sup>3</sup> Personal responsibility of stockholders is inconsistent with the conception of corporate liability at common law, and for this reason, if it exists at all, must rest upon some positive statute.<sup>4</sup>

The particular liability under consideration here arises by reason of the existence of statutory provisions that may be stated as follows: Liability of incorporators as partners through failure to legally organize the corporation. In Florida, Iowa, Minnesota, Nebraska, and Wisconsin stockholders are individually liable by statute for failure to comply with certain prescribed regulations in regard to organization and publicity.<sup>5</sup> In a few of the States the courts construe the liability of incorporators where they have failed to legally organize the corporation, not as partners at all. This on the ground that no such relationship or liability is contemplated by the incorporators, and that the creditors' only remedy is against the officers and agents who actually made the contract.<sup>6</sup>

In Indiana, Massachusetts, Michigan, New York, North Dakota,

<sup>1</sup> The liability may possibly still exist in Indiana and Kansas; see pages 257, 265.

<sup>2</sup> *Sacramento Bank v. Pacific Bank*, 124 Cal. 147; 56 Pac. 787; *Danielson v. Yoakum*, 116 Cal. 382; 48 Pac. 322; N. H. H. N. Co. v. Company, 142 Mass. 349; 7 N. E. 773; *Bates v. Day*, 198 Pa. St. 513; 48 Atl. 407; *Whitman v. Bank*, 176 U. S. 559; *Willis v. Mabon*, 48 Minn. 140; 50 N. W. 1110; *Marshall v. Sherman*, 148 N. Y. 9; 42 N. E. 419; *Tuttle v. National Bank*, 161 Ill. 497; 44 N. E. 984.

<sup>3</sup> *Toner v. Faulkerson*, 125 Ind. 224; 25 N. E. 218; *Hood v. McNaughton*, 54 N. J. L. 425; 24 Atl. 497.

<sup>4</sup> *S. L. C. N. Bank v. Hendrickson*, 40

N. J. Law, 52; *Ciar v. Iglehart*, 3 O. St. 457.

<sup>5</sup> *Kaiser v. Bank*, 56 Iowa, 104; 8 N. W. 772; *Fuller v. Rowe*, 57 N. Y. 23; *Connor v. Abbot*, 35 Ark. 366; *Johnson v. Corser*, 34 Minn. 355; 25 N. W. 799; *Hurt v. Salisbury*, 55 Mo. 310; *Bergeron v. Hobbs*, 96 Wis. 641; 71 N. W. 1056; *Clegg v. Company*, 61 Iowa, 121; 15 N. W. 365; *Slocum v. Head*, 105 Wis. 431; 81 N. W. 673.

<sup>6</sup> *Ward v. Brigham*, 127 Mass. 24; *Rutherford v. Hill*, 22 Ore. 218; 25 Pac. 546; *Canfield v. Gregory*, 66 Conn. 9; 33 Atl. 536; *Bank v. Hall*, 35 O. St. 158.



Oklahoma, Pennsylvania, South Dakota, Tennessee, and Wisconsin they are liable for the wages of employees of the corporation. In New York, in what is known as full liability corporations, stockholders are liable for debts of the corporation in full. In Arkansas, Delaware, Iowa, Maine, Michigan, Minnesota, New Hampshire, New Jersey, North Carolina, Vermont, and West Virginia stockholders are individually liable to the extent of any part of the corporate assets refunded to them respectively. In Idaho, Minnesota, North Carolina, and South Carolina stockholders are individually liable for any fraud or misconduct on their part. In Arizona, Delaware, Iowa, and Nebraska stockholders are personally liable for the debts of the corporation, unless they limit this liability by provision therefor in the charter.<sup>1</sup>

§ 123. **Statutory Liability of Directors.**—With the exception of a very limited number of States, all of the Commonwealths have statutes, either civil or penal, imposing liability upon directors for certain designated acts of misfeasance or non-feasance. These statutes are diverse both in scope and character. It will only be possible in this connection to enumerate without discussion the several liabilities thus imposed upon directors.

- (1) For illegal declaration of dividends.<sup>2</sup>
- (2) For illegal withdrawal of capital stock.<sup>3</sup>
- (3) For making false reports, or keeping false books of account, or making false representations.<sup>4</sup>

<sup>1</sup> Van Pelt v. Gardner, 54 Neb. 701; 75 N. W. 974.

<sup>2</sup> Such liability exists in Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. See Dykman v. Keeney, 160 N. Y. 677; 54 N. E. 1090; Chamberlain v. Company, 118 Mass. 552;

Pittsburg, etc. R. R. Co. v. Allegheny Co., 63 Pa. St. 126.

<sup>3</sup> Such liability exists in Alaska, California, Connecticut, Georgia, Idaho, Iowa, Mississippi, Montana, Nevada, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, South Dakota, Washington, and West Virginia.

<sup>4</sup> Such liability exists in Delaware, District of Columbia, Indiana, Kentucky, Montana, Nevada, New Hampshire, New York, Rhode Island, South Carolina, Tennessee, and Virginia. See Huntington v. Attrill, 118 N. Y. 365; 23 N. E. 544; Gidding v. Holter, 19 Mont. 263; 48 Pac. 8; Felker v. Company, 148 Mass. 226; 19 N. E. 225; Githers v. Clarke, 158 Pa. St. 616; 28 Atl. 232; Thompson Houston

- (4) For failure to file annual reports.<sup>1</sup>
- (5) For violation of express statutes.<sup>2</sup>
- (6) For authorizing the contraction of debts in excess of the amount limited by law.<sup>3</sup>
- (7) For contracting debts before statutory requirements, such as subscriptions for stock, either in whole or in part, publication of articles, etc., have been complied with.<sup>4</sup>
- (8) For failure to file certificates as to reduction of capital stock.<sup>5</sup>
- (9) For false oaths to articles of incorporation.<sup>6</sup>
- (10) For making loans to directors.<sup>7</sup>
- (11) For making loans to stockholders.<sup>8</sup>
- (12) For loss of funds through negligence.<sup>9</sup>
- (13) For failure to display name or itemized accounts at domiciliary office.<sup>10</sup>
- (14) For failure to allow inspection of books.<sup>11</sup>

*Electric Co. v. Murray*, 60 N. J. L. 20; 37 Atl. 443.

<sup>1</sup> Such liability exists in Colorado, Michigan, Montana, New Hampshire, New York, and Oklahoma. See *Garrison v. Howe*, 17 N. Y. 458; *Van Etten v. Eaton*, 19 Mich. 187; *Shanklin v. Gray*, 111 Cal. 88; 43 Pac. 399; *Cincinnati Cooperage Co. v. O'Keeffe*, 120 N. Y. 603; 24 N. E. 993; *Wallace v. Walsh*, 125 N. Y. 26; 25 N. E. 1076; *Glenn Falls Paper Co. v. White*, 18 Hun (N. Y.), 214; *Bolen v. Crosby*, 49 N. Y. 183; *Tabor v. Bank*, 62 Fed. 383; 10 C. C. A. 429.

<sup>2</sup> Such liability exists in Arkansas, Idaho, Indiana, Kentucky, Michigan, North Dakota, and South Dakota. See *Patterson v. Stewart*, 41 Minn. 84; 42 N. W. 926; *Loverin v. McLaughlin*, 161 Ill. 417; 44 N. E. 99; *Clow v. Brown*, 150 Ind. 185; 48 N. E. 1034; 49 N. E. 1057; *Gunther v. Company*, 21 Ky. L. Rep. 655; 52 S. W. 931.

<sup>3</sup> Such liability exists in California, Illinois, Idaho, Mississippi, Montana, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, Tennessee, Vermont, and Wyoming. See *Tradesmen Pub. Co. v. Company*, 95 Tenn. 634; 32 S. W. 1097; *Lewis v. Montgomery*, 145 Ill. 30; 33 N. E. 880; *Hornor v. Henning*, 93 U. S. 228.

<sup>4</sup> Such liability exists in Illinois, Ohio, Vermont, and Wisconsin. See *Kent v. Clark*, 181 Ill. 237; 54 N. E. 967; *Clow v. Brown*, 150 Ind. 185; 48 N. E. 1034; 49 N. E. 1057; *Hequembourg v. Edwards*, 155 Mo. 514; 55 S. W. 490; *Loverin v. McLaughlin*, 161 Ill. 417; 44 N. E. 99.

<sup>5</sup> Such liability exists in Indiana, New Jersey, and North Carolina.

<sup>6</sup> Such liability exists in Massachusetts.

<sup>7</sup> Such liability exists in Massachusetts and New York. See *Thacher v. King*, 156 Mass. 490; 31 N. E. 648; *Connecticut River Bank v. Fiske*, 62 N. H. 178; *Witers v. Sowles*, 31 Fed. 1.

<sup>8</sup> Such liability exists in District of Columbia, Mississippi, Missouri, New Hampshire, New York, Oklahoma, Rhode Island, and Tennessee. See *Workingmen's Banking Co. v. Rautenberg*, 103 Ill. 460; *Bank Commissioners v. Bank of Buffalo*, 6 Paige (N. Y.), 497.

<sup>9</sup> Such liability exists in Minnesota. See *Horn Silver Mining Co. v. Ryan*, 42 Minn. 196; 44 N. W. 56; *M. F. N. Bank v. Harper*, 61 Minn. 375; 63 N. W. 1079.

<sup>10</sup> Such liability exists in California and New Jersey. See *Eyre v. Harmon*, 92 Cal. 580; 28 Pac. 779; *Ball v. Toman*, 119 Cal. 35; 51 Pac. 546.

<sup>11</sup> Such liability exists in New Jersey.

(15) For embezzlement of officers.<sup>1</sup>

(16) For failure to make certificate of payment of capital stock.<sup>2</sup>

(17) For making false appraisal as to value of property taken in exchange for corporate stock.<sup>3</sup>

(18) For not producing list of stockholders at the annual election of directors.<sup>4</sup>

(19) For permitting an illegal issue of stock or bonds.<sup>5</sup>

(20) For making prohibited transfers of property.<sup>6</sup>

(21) For issuing stock as full paid when less than its par value is paid thereon.<sup>7</sup>

§ 124. **Extension of Corporate Existence.** — In order to extend corporate existence special legislative action is necessary.<sup>8</sup> In nearly all of the States statutes exist providing that for a period of three years after the term of existence limited by its charter has expired, the corporation shall continue to exist for the purpose of winding up its affairs. Express power to extend corporate existence is granted in twenty-five of the Commonwealths.<sup>9</sup>

Where corporations are permitted under their charter to make their term of existence perpetual, this right to extend corporate existence is of very little practical importance. As, however, perpetual existence is permitted in only twenty-seven of the States, it is a question of much practical importance in the remainder. It has been held by at least one court of excellent repute that where the power of amendment of the charter is unlimited, even though it does not refer specifically to the right to extend corporate existence, it may nevertheless be used for that purpose.<sup>10</sup>

When so extended, it must pay an organization tax if the law

<sup>1</sup> Such liability exists in Colorado, New Mexico, and Pennsylvania. See *Scott v. Depeyster*, 1 Edw. Ch. (N. Y.) 513; *Wallace v. Bank*, 89 Tenn. 630; 13 S. W. 48; *Onderkirk v. Bank*, 119 N. Y. 263; 23 N. E. 875.

<sup>2</sup> Such liability exists in Colorado, Delaware, Maryland, New Hampshire, North Carolina, and Rhode Island.

<sup>3</sup> Such liability exists in Connecticut. See *Hequembourg v. Edwards*, 155 Mo. 514; 56 S. W. 490; *F. C. T. Co. v. Floyd*, 47 O. St. 525; 26 N. E. 110.

<sup>4</sup> Such liability exists in Delaware and New Jersey.

<sup>5</sup> Such liability exists in North Dakota and New York. See *Clow v. Brown*, 150 Ind. 185; 48 N. E. 1034.

<sup>6</sup> Such liability exists in New York.

<sup>7</sup> Such liability exists in North Dakota. See *Schley v. Dixon*, 24 Ga. 273.

<sup>8</sup> *People v. Pfister*, 57 Cal. 532; *Attorney-General v. Perkin*, 73 Mich. 303; *Smith v. Company*, 58 N. J. Eq. 331; 43 Atl. 567; *People v. Greene*, 116 Mich. 505; 74 N. W. 714; *Frostberg Mining Co. v. Company*, 81 Md. 28; 31 Atl. 698.

<sup>9</sup> See Part III. Table 8, page 576.

<sup>10</sup> *People v. Greene*, 116 Mich. 505; 74 N. W. 714.

so provides, even though existence is extended under guise of an amendment.<sup>1</sup>

§ 125. **Taxation of Domestic Corporations.** — Legislative control over domestic corporations is exercised by means of the unquestioned right of such legislatures to impose a tax upon their organization and annually thereafter in the form of a franchise tax. The latter may be defined to be a tax levied by the State upon the capital of a corporation in return for the privilege of exercising its corporate powers within the limits of the State levying such tax. On the general subject of franchise tax the New York Court of Appeals in a recent case<sup>2</sup> spoke as follows:

"The system of taxation in this State is so complicated as to invite mistakes on the part of those who are called upon to enforce the law. In some instances the tax is laid upon property and in others upon rights and privileges connected with the property. There is direct taxation of real estate and of some personal property, indirect taxation of other personal property, taxation of the capital stock of corporations and of their franchises, taxation upon the right of succession to the property left by decedents, and the like. . . .

"There is, first, an organization tax, payable to the State, which is imposed but once, and is exacted for the privilege of becoming a corporation. Next, there is a tax upon the real estate owned by the corporation in this State, which is assessed the same as if it were owned by an individual. The personal property of the corporation is not directly taxed, but its capital stock and surplus after deducting the assessed value of its real estate and making some other deductions, is assessed at its actual value. Finally, there is a franchise tax on corporations which is payable annually to the State, 'computed upon the basis of the amount of its capital stock employed within this State.' This is not a tax upon property, although it is measured by the value of property, but upon the right of a corporation to exist and exercise the powers granted by its charter. These forms of taxation do not all rest upon the same principle. The organization tax is in the nature of a license fee for the right to become a corporation. The tax upon real estate is a direct tax upon real property, while the franchise tax is not laid upon property at all, but is imposed upon the corporation for the privilege of carrying on business in this State and exercising the corporate franchises granted by the State. The distinction between a tax upon the prop-

<sup>1</sup> *Nl. Lead Co. v. Dickinson* (N. J.), 57 Atl. 138.

<sup>2</sup> *People ex rel. etc. v. Knight*, 174 N. Y. 475; 67 N. E. 65.

erty of a corporation and a franchise tax, although well established and of great importance, is easily overlooked, as we find from our own experience."

With reference to organization taxes there can be no question raised as to the constitutionality of such taxation.<sup>1</sup>

The constitutionality of franchise taxes being imposed upon the franchise as a species of property is clearly within the constitutional powers of State legislatures.<sup>2</sup> In all of the States and Territories, with the exception of Alaska, Arkansas, District of Columbia, Georgia, Indian Territory, and Oklahoma, graduated organization taxes are imposed upon domestic corporations.

With respect to annual franchise taxes these are imposed only in the States of Alabama, Colorado, Delaware, Maine, Massachusetts, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Vermont, Washington, and West Virginia. In Alabama, Colorado, Maine, North Carolina, Oregon, South Carolina, Texas, Vermont, Virginia, Washington, and West Virginia the tax is levied upon the total amount of authorized capital stock, irrespective of the amount that may have been issued and outstanding.

In Delaware, Massachusetts, New Jersey, and Ohio the tax is graded according to the amount of capital stock issued and outstanding. In New York the tax is determined largely by the dividends on the par value of the amount of capital stock authorized. It is also graded on the amount of capital stock employed within the State.

§ 126. **Regulation of the Right of Consolidation.**—To accomplish a valid consolidation of two corporations that are organized under the laws of the same or of different States, legislative authority is necessary. It is not over-stating the matter to say that legislative authority is as necessary for the accomplishment of a valid consolidation of existing corporations as it is to the creation of a corporation in the first instance.<sup>3</sup> Any attempt, therefore, on the

<sup>1</sup> *United Horseshoe Works v. Lewis*, 1 Abb. (U. S.) 518; Fed. Cas. No. 14365; *Combined Saw & Planer Co. v. Flournoy*, 88 Va. 1029; 14 S. E. 976; *State v. Rotwitt*, 17 Mont. 41; 41 Pac. 1004; *Hughesdale Mfg. Co. v. Vanner*, 12 R. I. 491; *Jones v. Company*, 21 Col. 263; 40 Pac. 457.

<sup>2</sup> *Society for Savings v. Coit*, 6 Wall. (U. S.) 594; *Tidewater Pipe Line Co. v. Berry*, 53 N. J. L. 212; 21 Atl. 490; *Attorney-General v. Bay State Mining Co.*, 99 Mass. 148.

<sup>3</sup> *Pearce v. Company*, 22 How. (U. S.) 441; *A. L. & T. Co. v. Company*, 157 Ill. 641; 42 N. E. 153; *Cole v. Company*, 133 N. Y. 164; 30 N. E. 847.

part of corporations to consolidate in the absence of any statute permitting consolidation will not be recognized by the courts.<sup>1</sup> Where power is granted to corporations to consolidate it is usually done by means of a general statute. Such statutes exist in a comparatively small number of the Commonwealths, the legislatures of the remaining States evidently looking upon consolidation as a form of a trust and therefore to be restricted.<sup>2</sup> Some of the statutes limit the right of consolidation to corporations of the same character or engaged in the same line of business.<sup>3</sup> Where the right to consolidate existed at the time the corporation was created it can ordinarily be affected by vote of a majority of the stockholders against the dissent of the minority.<sup>4</sup> However, in the absence of such authority conferred prior to the incorporation of a company, it has been held that consolidation cannot be affected against the dissent of the minority stockholders.<sup>5</sup>

When it comes to the matter of consolidation, creditors have no right to intervene for the purpose of preventing such a consolidation providing the same is undertaken under legislative authority. The remedy of creditors in such cases is to proceed in equity with a view to subjecting the property of the consolidated corporation to the payment of their claims.<sup>6</sup> Sometimes, though not always, when a new corporation is formed by the consolidation of a domestic corporation with a foreign corporation, it is required to pay an organization tax, at least upon so much of the capital stock as is represented by the capitalization of that of the consolidated domestic corporation.<sup>7</sup>

<sup>1</sup> *Greenville Warehouse Press Co. v. Company*, 70 Miss. 669; 13 So. 879.

<sup>2</sup> See Part III. Table 9, page 579.

<sup>3</sup> See *In re Prospect Park & Coney Island Railway Co.*, 67 N. Y. 371.

<sup>4</sup> *Spero v. Company*, 7 Ind. 369; *Sprague v. Company*, 90 Ill. 174.

<sup>5</sup> *Clearwater v. Meredith*, 1 Wall. (U. S.) 25; *K. & R. I. Ry. Co. v. Marsh*, 17

Wis. 13; *Mowrey v. Company*, 4 Bissell, 78; Fed. Cas. No. 9891.

<sup>6</sup> *People v. Company*, 92 N. Y. 105. See *R. I. Ry. Co. v. Moffatt*, 75 Ill. 524; *N. D. Ry. Co. v. Company*, 120 Mass. 397.

<sup>7</sup> *State v. Sherman*, 22 O. St. 411; *P. Co. v. Company*, 113 U. S. 296; *A. & R. A. L. Co. v. State*, 63 Ga. 2183; *contra*, *People v. Company*, 129 N. Y. 474; 29 N. E. 951.

## CHAPTER VI.

### LEGISLATIVE CONTROL OVER FOREIGN CORPORATIONS.

§ 127. **Extent of Legislative Power of the various Commonwealths over Foreign Corporations.** — A foreign corporation may be defined as one created under the laws of a State, Territory, government, or country other than that wherein it seeks to do business.<sup>1</sup> With some few exceptions nearly all of the Commonwealths have enacted statutes prescribing the terms and conditions upon which foreign corporations may carry on business within their borders.<sup>2</sup> Most of these statutes closely resemble each other in character, and generally look to the attainment of the same end. Thus, for example, in order to give courts of the foreign State jurisdiction over the foreign corporation and to secure proper protection for such of its citizens as may transact business with the latter, the statutes prescribe that foreign corporations shall designate an agent residing within the State upon whom service of process upon the corporation may be served, and also designate a place of business where it may be found. Such provisions are unquestionably valid.<sup>3</sup>

Again, most of the acts require that a certified or sworn copy of the charter of the foreign corporation shall be filed in certain designated offices, usually with the Secretary of State and in the local recording office of the county where its principal place of business is to be located. The object of such enactment is to furnish easily accessible evidence of the existence of the corporation, and to protect parties dealing with it from fraud and imposition.<sup>4</sup>

Still other States require the filing of reports enumerating the officers, giving information relative to the business to be transacted within the foreign State and as to the financial condition

<sup>1</sup> *Daly v. Company*, 64 Ind. 1.

<sup>4</sup> *Evans v. Lee*, 11 Nev. 194; *D. F. Co.*

<sup>2</sup> See Part III. Table 13, page 583.

*v. Augustine*, 5 Wash. 67; 31 Pac. 327;

<sup>3</sup> *St. Clair v. Cox*, 106 U. S. 356; *Huffman v. Company*, 13 Tex. Civ. Ap. Lafayette Ins. Co. *v. French*, 18 How. 169; 36 S. W. 306. (U. S.) 404.

of the corporation.<sup>1</sup> The right to transact business in a foreign State is a matter of State comity, pure and simple. The recognition of a foreign corporation and enforcement of its contracts in States other than that of its creation rests only on comity, and any conditions governing the right to transact business outside of the domiciliary State of the corporation may be imposed upon them or they may be entirely excluded.<sup>2</sup> But the conditions imposed must not be repugnant to the Constitution of the United States or to the public policy of the foreign State as evidenced by its statutory enactments and judicial decisions, nor can they be repugnant to rules of public law.<sup>3</sup>

In this connection it may be observed that foreign corporations cannot claim the protection of the prohibition of the United States Constitution against denying to citizens of any State the privileges and immunities of citizens of the several States.<sup>4</sup> Nor can they claim the benefit of the clause against denying to any person equal protection of the law.<sup>5</sup>

A State may preclude all foreign corporations not engaged in interstate commerce or in the employ of the general government from transacting business within its limits, and the courts cannot inquire into its reasons for so doing.<sup>6</sup> A State may discriminate between foreign and domestic corporations.<sup>7</sup> In short, the power of States over foreign corporations with respect to imposing conditions for doing business are as broad as those exercised over domestic corporations.<sup>8</sup> Wherever a corporation transacts its business it carries its charter with it, and that becomes the law of its existence in the foreign State, for the charter is the same abroad as it is at home. Whatever disabilities are placed upon the corporation at home are ordinarily equally binding upon it abroad, and whatever proper legislative control it is subject to must in general be recognized and submitted to by those who deal with it elsewhere.<sup>9</sup> The foregoing rule should be qualified

<sup>1</sup> *Washington County Mut. Ins. Co. v. Dawes*, 6 Gray, Mass. 376.

<sup>2</sup> *Paul v. Virginia*, 8 Wall. (U. S.) 161.

<sup>3</sup> *Lafayette Ins. Co. v. French*, 18 How. 407; *S. P. Ry. Co. v. Denton*, 146 U. S. 201; *Am., etc. Christian Union v. Yount*, 101 U. S. 356.

<sup>4</sup> *Paul v. Virginia*, 8 Wall. (U. S.) 168.

<sup>5</sup> *P. C. S. M. & C. Co. v. Pennsylvania*, 125 U. S. 181.

<sup>6</sup> *Doyle v. Company*, 94 U. S. 541; *Horn Silver Mining Co. v. New York*, 143 U. S. 314.

<sup>7</sup> *Ducat v. Chicago*, 10 Wall. (U. S.) 415.

<sup>8</sup> *Orient Ins. Co. v. Daggs*, 173 U. S. 566.

<sup>9</sup> *Canada, etc. Ry. v. Gebherd*, 109 U. S. 597; *Isle Royale Land Corporation v. Sec. of State*, 76 Mich. 162; 43 N. W. 14.



by the statement that a foreign corporation can do no act in a foreign State which cannot be done through the intervention of a mere agent and which is not in contemplation of law the direct act of the corporation itself.<sup>1</sup>

Comity between States authorizes a corporation to exercise its charter powers within any State, but it does not permit the exercise of a power where the policy of that State distinctly marked by legislative enactments or constitutional provisions forbids it.<sup>2</sup> It has been well said that "no rule of comity will allow one State to charter corporations to operate in another State unless there is willingness on the part of the foreign State that it should be so. To hold otherwise would be to say that the right of one State by comity is superior to the sovereign will of the other. This involves the surrender of sovereignty to a rule of comity and to a matter of international etiquette, which no sovereign State should for a moment think of."<sup>3</sup>

A great deal of litigation has arisen through the question whether or not foreign corporations may exercise the same powers in a foreign State that their charter authorizes them to exercise in the domestic State. It has been held that foreign corporations cannot exercise outside of the domicile State powers which their own charters do not permit them to exercise within the State of their origin, nor can they exercise powers in a foreign State not permitted to corporations organized under the laws thereof.<sup>4</sup> They cannot, however, do any acts which are contrary to the public policy of the foreign State.<sup>5</sup> Nor can they transact business for which domestic corporations cannot be formed on account of statutory prohibition thereof.<sup>6</sup>

In some jurisdictions what are termed "retaliatory statutes" have been enacted. The purpose of these statutes is to put corporations coming from other States upon the same plane as domestic corporations of that State are placed when they seek in turn to transact business in the States referred to.<sup>7</sup> Sometimes the laws of the foreign State expressly provide that foreign

<sup>1</sup> *Duke v. Taylor*, 37 Fla. 641; *Demarest v. Flack*, 128 N. Y. 205; 28 N. E. 645; 338; *State v. Water Co.*, 61 Kan. 563; *Colwell v. Company*, 100 U. S. 55. *People v. Howard*, 50 Mich. 239.

<sup>2</sup> *McDonough v. Murdoch*, 15 How. (U. S.) 413.

<sup>3</sup> *Empire Mills v. Company* (Tex. Ap.), 15 S. W. 506.

<sup>4</sup> *Diamond Match Co. v. Powers*, 51

<sup>5</sup> *L. G. R. T. Co. v. Commissioners*, 6 Kan. 245.

<sup>6</sup> *Empire Mills v. Company* (Tex. Ap.), 15 S. W. 200.

<sup>7</sup> *Talbot v. Company*, 74 Mo. 544.

corporations shall have no rights or privileges other than those possessed by domestic corporations of the same character. A fair interpretation of such statutes would seem to be that such foreign corporations shall have equal powers with domestic corporations of a character similar to their own.<sup>1</sup>

In a recent case an interesting question arose as to the legal effect of inserting powers in a charter to be exercised only outside of the State, such powers being forbidden by the laws of the State in which the corporation was organized.<sup>2</sup> In this case the Federal Court of the State of Washington spoke as follows:

"It has become a habit of business men in this country to organize corporations in one State to operate in another, and presumably there is some advantage to be gained thereby, otherwise the practice would not be continued. But no sound reason has been advanced, and none occurs to my mind, for giving additional encouragement to the practice by judicially expanding the powers of such corporations so as to include additional rights and powers to be exercised abroad but not at home. Corporations organized under legislative statutes are not endowed with the rights of natural persons to do as they please except when restrained by prohibitive laws. On the contrary, the rule is that they have only such powers and rights as the statutes confer, and the enumeration of their powers implies the exclusion of all others except such subordinate and incidental rights and powers as are essential to their existence and the exercise of the rights and powers conferred in express terms, and the corporation can make no contracts and do no acts other than permitted by the State which created it except such as are authorized by its charter."

The general rule is that foreign courts will not interfere in the internal management of foreign corporations; that is, except in the presence of extraordinary circumstances.<sup>3</sup> In this connection a distinction obtains where the act complained of affects the party solely in his capacity as stockholder, for there he must seek redress of his grievance in the courts of the domiciliary State of the corporation. But where the act affects his individual

<sup>1</sup> See sec. 15, Art. XII. California Constitution; sec. 11, Art. XV. Montana Constitution; *I. & M. B. Co. v. Stone*, 174 Mo. 1; 73 S. W. 453; *MacGinniss v. Company* (Mont.), 75 Pac. 89; *Lowe v. Company*, 52 Cal. 60.

<sup>2</sup> *Seattle Gas & Electric Co. v. Citizens' Light & Power Co.*, 123 Fed. 588; 125 Fed. 1001.

<sup>3</sup> *Sidway v. Company*, 104 Fed. 481; *Kimball v. Company*, 157 Mass. 7; 31 N. E. 697.

rights he may seek redress in any tribunal where jurisdiction may properly be acquired.<sup>1</sup> Foreign courts have not the power to forfeit charters of foreign corporations.<sup>2</sup>

*Quo warranto* is the proper proceeding to try the right of a foreign corporation to carry on corporate business in a foreign State.<sup>3</sup>

The certificate of the Secretary of State authorizing a foreign corporation to transact business within the State is a franchise emanating from the State, and cannot be gone behind or revoked by any authority but the State.<sup>4</sup>

§ 128. *Doctrine of State Comity.*—What is known as the “doctrine of State comity” is nothing more nor less than a recognition of the principle that the right of foreign corporations to engage in business in a State other than that of their creation depends solely on the will of such other State.<sup>5</sup>

While there are exceptions to this rule they only exist where the corporation created by one State rests its right to enter another and engage in business therein upon the nature of its business. As, for instance, where it is necessarily an instrumentality of interstate commerce, and its business constitutes such commerce, it is therefore wholly within the paramount authority of Congress. In this case the exceptional business is protected against interference by such authority.

If the power to regulate applies to all the instances to which such commerce gives rise, and to all contracts which might be made in the course of its transactions, that power would embrace the entire sphere of mercantile activity in any way connected with the trade between the States, and would exclude State control over many contracts purely domestic in their nature. The power to exclude where it exists, embraces the power as well to regulate and to enforce all legislation in regard to things done within the State which may be directly or incidentally requisite in order to render the enforcement of the State powers efficacious to the fullest extent, subject always of course to the paramount authority of the United States.<sup>6</sup> Let us now turn our attention

<sup>1</sup> N. S. C., etc. Co. v. Field, 64 Fed. 151; M. B. T. Co. v. R. G. N. Co., 81 N. Y. Sup. 302.

<sup>2</sup> Fritts v. Palmer, 132 U. S. 289.

<sup>3</sup> State v. Ins. Co., 39 Minn. 538; 41 N. W. 108.

<sup>4</sup> State ex rel. v. Ackerman, 51 O. St. 163; 37 N. E. 828.

<sup>5</sup> Hooper v. State of California, 155 U. S. 148.

<sup>6</sup> W. U. Tel. Co. v. Mayer, 28 O. St. 521.

to the attitude maintained by the State courts towards foreign corporations.

One of the familiar features of the present day is the organization of corporations under the laws of one State whose statutes are particularly favorable with the intention of carrying on no business in the State of its organization and with the avowed purpose of carrying on business in other States. Long ago these corporations were nominated as "tramp corporations," and there was at the outset some effort made on the part of the courts to limit the powers and question the legal status of such corporations. There was an attempt made to induce the courts to refuse to judicially recognize such corporations, and to hold their stockholders liable upon their contracts as partners and upon their torts as joint tortfeasors.<sup>1</sup>

But the liberal policy of the American States in extending hospitality to foreign corporations and the powerful influence of interstate comity has completely overcome the tendency here referred to, so that at the present day the doctrine is established in practically every State in the Union, that each of these States will recognize as valid a corporation formed under the laws of another State for the express purpose of doing business outside of the State of its origin.<sup>2</sup>

The broader view taken by the courts on this question is well set forth by the decision of the New York Court of Appeals in *Merrick v. Van Sanvoort*.<sup>3</sup> In this case attempt was made to establish the doctrine that where a Connecticut corporation conducts all its business in the State of New York, it must thereby be deemed to have migrated to New York and to have forfeited its charter, thus permitting creditors of the corporation to hold the members, officers, and agents of the corporation personally liable for the debts and torts of the corporation. In refusing to recognize this doctrine the court spoke as follows:

"Hitherto corporate enterprise has not been trammelled by unfriendly legislation. No jealousy or competition or rivalry of adverse interest has been permitted to convert State lines into barriers

<sup>1</sup> See *Hill v. Beach*, 12 N. J. Eq. 31; *Landgrant, etc. Co. v. Coffey Co.*, 6 Kan. 245; *Montgomery v. Forbes*, 148 Mass. 249; 19 N. E. 342; *Atterberry v. Knox*, 4 B. Monroe (Ky.), 90.

<sup>2</sup> See *Merrick v. Van Sanvoort*, 34 N. Y. 208; *Demarest v. Flack*, 128 N. Y. 205; *State ex rel. v. Cook* (Mo.), 80 S. W. 929.  
<sup>3</sup> 34 N. Y. 208.

of obstruction to the free course of general commerce. Its avenues have been open to all.

"In this country our individual interests are so interwoven that the union of the States is due, in its continuance, if not in its origin, as much to commercial as to political necessity. The citizens of each claim a birthright in the advantages and resources of all. They demand from their local authorities such facilities as the law-making power can afford in the employment of labor and capital. They claim such corporate franchises and immunities as may enable them to compete on equal terms with the citizens of other States. For these, with the structure of our institutions, they naturally look to their own government. They acknowledge a double allegiance in their local and federal relations, which, by general consent, carries with it a correlative community of rights. They may live in an inland State, but they are none the less citizens of a maritime nation, and they may lawfully organize companies at home for traffic on ocean highways.

"A corporate charter is in the nature of a commission from the State to its citizens, and their successors in interest, whether at home or abroad. Each government, in the exercise of its own discretion, determines the conditions of its grant. It is free to impose or omit territorial restrictions, but it can confer general powers to be exercised within its bounds or without them, wherever the comity of nations is respected. For the purpose of commerce such a commission is regarded like a government flag, as a symbol of allegiance and authority; and it is entitled to recognition abroad until it forfeits a recognition at home. . . .

". . . We think the policy of this State is in harmony with that of the country, and that it would be neither provident nor just to inaugurate a rule which would unsettle the security of corporate property and rights and exclude others from the enjoyment here of privileges which have always been accorded abroad. Our national commerce is but the aggregate of that of the States, and every needless restriction by the operation of local laws is unjust and calamitous to all. We suppose the rules of comity on which we have hitherto acted to be generally accepted and approved. We see no reason why a Southern State may not grant to a corporation of its planters the right to erect mills for the manufacture of their cotton in New England; nor why the legislature of Massachusetts may not authorize a company of Lowell millers to raise cotton in South America or the Sea Islands. The State of Illinois touches neither the Atlantic nor the Pacific; but if it should organize a company of its citizens on the ocean with its office in the City of New York

and its business conducted by managers elected annually in Chicago, the rights of the corporation would be recognized wherever the obligations of national law are respected."

Through the operation of interstate comity corporations organized under the laws of one State may exercise their corporate powers outside of the geographical limits of the State from which they have obtained their charter. The doctrine of the courts on this subject is well set forth by the United States Supreme Court in *Cowell v. Colorado Springs Co.*<sup>1</sup> as follows :

"By the general comity which, in the absence of positive direction to the contrary, obtains through the States and Territories of the United States, corporations created in one State or Territory are permitted to carry on any lawful business in another State and Territory, and to acquire, hold, and transfer property there equally as individuals. If the policy of the State or Territory does not permit the business of the foreign corporations in its limits or allow the corporation to acquire or hold real property, it must be expressed in some affirmative way; it cannot be inferred from the fact that its legislature has made no provision for the formation of similar corporations or allows corporations to be formed only by general law."

A most instructive case in this immediate connection is that of *Demarest v. Flack*,<sup>2</sup> wherein the New York Court of Appeals observed that :

"The courts of every State and country recognize foreign corporations through what is termed national or State comity. But whether such recognition shall be given must be decided by the courts of the country where the corporation seeks to do business. In our State, as in others, it is a question of domestic policy, and what that policy is must be determined by an examination of our own legislation. If we find any direct enactment upon the subject, it is our duty to obey it, and in its absence we must determine the question with reference to our general legislation and to the circumstances which surround us as a great and growing commercial community, having need of and employing large amounts of combined capital, and for whose prosperity and growth it is of the utmost importance that such capital should have the greatest facilities extended it for useful employment, with reasonable and proper personal exemptions from liability. We can find no reason for a domestic policy that should exclude from recog-

<sup>1</sup> 100 U. S. 55.

<sup>2</sup> 128 N. Y. 205; 28 N. E. 645.

nitition by our courts foreign corporations generally. It may safely be said there can be no such domestic policy at the present day in a civilized State. . . .

“An examination of our laws shows that it is, and for many years has been, the policy of this State to enlarge the facilities for the formation of corporations. General laws are on our statute book for the formation of corporations of almost every conceivable kind, and under some one of them a corporation of the kind mentioned in the case could readily be formed. The freedom from personal liability would be as great and could be as easily attained under our own as under the laws of West Virginia. The security of the creditor would not be substantially greater in the case of the domestic than in that of the foreign corporation. In the latter the creditor has the remedy by attachment, and he can obtain about as easy access to its property as if it were domestic instead of foreign.

“There is really nothing to evade by incorporating under a foreign law. No harmful results flow to a creditor or to the community here by such incorporation. Where the corporation formed under another jurisdiction comes here to do business of a kind which we permit to be done by corporations, and where our laws provide for incorporating individuals for the purpose of doing that business, it is difficult to see how the terms ‘evasion’ and ‘fraud’ can be properly applied to acts of our citizens whereby they obtain incorporation in another State. When they come in our State to do business they must conform to our laws relating to foreign corporations and comply with the terms laid down by us as conditions of allowing them to transact business here. In the case of many kinds of corporations such conditions have already been imposed by our laws, and if there be any kind where none is imposed it is conclusive evidence that up to this time the legislature has not thought it conducive to the true interests of the State and its citizens to impose them. I do not intimate that it is necessary for a State to expressly by statute exclude foreign corporations from acting within its jurisdiction. The policy of the State may exclude them, and that policy may be clearly established by a reference to the general legislation of a State. I find none such in the laws of this State.

“It has been urged that the easy way which our laws provide for forming corporations is itself a reason why we should not recognize as a corporation those of our own citizens who have gone to another State for the purpose of incorporating themselves under the laws thereof, to do business in our own State as such corporation.

“We think there is very little force in the argument. The public policy which we see in our own State, as evidenced by her laws upon

the subject of the formation of corporations, is one which looks to their ready and easy formation as a means of transacting business with an accumulation of capital and an exemption from personal liability to the largest extent consistent with reasonable supervision by the State. The facilities for incorporation offered by this State are not the result of any desire to promote the formation of corporations here as against their formation in other States. They are offered because of a policy on our part which urges upon the State the propriety of furnishing them as one means of controlling the business done by them and keeping it within our borders. If in any particular case it is thought by those interested in the matter that the business can be done in our own State and by our own citizens with greater facility under the form of a foreign corporation than under that of a domestic one, there is no public policy which forbids its transaction under such form. The supervision of a foreign corporation by this State may easily be exercised by imposing terms as a condition of permitting it to do business here. The absence of any such terms in our legislation forms no reason for refusing to recognize the corporation. The power rests with the legislature to say whether any, and if so what, terms shall be imposed upon such corporations as a condition of granting them permission to do business here. Those terms can only be imposed by the legislature, and in their absence our courts ought not, merely on that account, to refuse to recognize a foreign corporation. In the absence of legislation, our courts must either refuse absolutely, or else they must recognize the right of such corporations to come to this State and do business here. The courts cannot themselves impose terms or conditions. . . .

“The truth is, foreign corporations are not properly to be regarded with suspicion, nor should unnecessary restraints be imposed upon their doing business in our midst. They carry no black flag, and the policy of all civilized nations is to grant them recognition in their courts. It seems to me that every reason which urges upon us the recognition of foreign corporations organized with power to do business in our State and composed of citizens of the foreign State, is equally potent when the foreign corporation is composed of our own citizens. It has always been supposed that a State should at least deal as liberally with its own citizens as with those of foreign States. If, therefore, we permit foreign citizens to come within our limits in the form of a foreign corporation organized with power to do business here and recognized by us, why should we not permit our own citizens to avail themselves of the like privilege? If we impose terms and conditions upon foreign corporations, as such, doing business here, those same terms and conditions still and



equally apply to a foreign corporation when composed of our own citizens. Why should they not be placed at least upon an equality with the foreign citizen?"<sup>1</sup>

§ 129. **What constitutes doing Business on the Part of a Foreign Corporation within the State.**—There is perhaps no subject of corporation law wherein will be found greater diversity in the opinions of the courts of the several Commonwealths than that relating to the rights of foreign corporations. The growth of corporate organization as well as the vast extension of the business of corporations outside of the State of their origin has made the question of determining what in legal effect constitutes doing business on the part of a foreign corporation in States other than that of its domicile one of great practical importance. As has already been observed, parties may incorporate in one State at the present time for the purpose of transacting their business in another Commonwealth.<sup>2</sup>

In some of the States, notably South Carolina, the legislatures have attempted to give a statutory definition as to what constitutes doing business on the part of a foreign corporation within the Commonwealth. In most of the States, however, the question is left for judicial determination. A fair example of such statutes is to be found in the New York statute<sup>3</sup> which provides that "no foreign corporation, other than a moneyed corporation, shall do business in the State without having first procured" a proper certificate from the Secretary of State that it has complied with the statutes in such case made and provided. From the foregoing it will appear that the whole question centres upon the meaning of the word "business" as used in the statutes, of which the foregoing is a fair example. It will be impossible within the limits of this work to discuss at any length the conflicting decisions of the courts on the point here referred to. All that it is proposed to do is to present certain rules which a careful reading of the authorities have shown to represent the prevailing and better considered opinions of the various courts on the questions presented. These rules may be enumerated as follows:

<sup>1</sup> See also *Lancaster v. Amsterdam* 484; 28 Atl. 973; *Hanna v. Company, Improvement Co.*, 140 N. Y. 576; 35 N. E. 23 O. St. 622.  
964.

<sup>2</sup> *State ex rel. v. Cook (Mo.)*, 80 S. W. chap. 563, sec. 150; amended by Laws of 929; *Oakhill Mfg. Co. v. Garst*, 18 R. I. 1901, chaps. 96, 538.

(1) In order to constitute the transaction of business by a foreign corporation within the foreign State, it is not indispensable that it should do the greater part of its business therein. If it does any part of its ordinary business therein and the same cannot properly be styled purely interstate commerce, the same constitutes the transaction of business therein within the meaning of the statute.<sup>1</sup>

(2) Generally speaking, the making of a single contract within the foreign State does not constitute the transaction of business therein.<sup>2</sup> There must be more or less continuity in the matter.

(3) The institution and prosecution of actions not arising out of previous transactions had within the foreign State does not constitute the transaction of business within the meaning of the statute.<sup>3</sup>

(4) Sales of merchandise by foreign trading corporations made by means of non-resident travelling salesmen, or by correspondence had between the foreign corporation at the domiciliary office and customers in the foreign State, or upon unsolicited orders from customers in the foreign State, do not constitute transaction of business within the meaning of the statute regulating the transaction of business by foreign corporations.<sup>4</sup>

Aside from the question of the nature of the act, there are constitutional grounds upon which it would be held that corporations were not, under the circumstances here referred to, subject to the statutes in such foreign State compelling foreign corporations to obtain a permit to do business therein. The constitu-

<sup>1</sup> *Lamb v. Lamb*, 6 Biss. 420; Fed. Cas. No. 8018.

<sup>2</sup> *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727; *Gilchrist v. Helena H. S. & S. R. Co.*, 47 Fed. 593; *Colorado Iron Works Co. v. Company*, 15 Col. 499; 25 Pac. 325; *Commonwealth v. Standard Oil Co.*, 101 Pa. St. 119; *Florsheim Co. v. Lester*, 60 Ark. 120; 29 S. W. 34; *Miller v. Williams (Col.)*, 59 Pac. 740; *Tabor v. Company*, 11 Col. 419; 18 Pac. 537; *Creteau v. Foote Co.*, 40 Ap. Div. (N. Y.) 215; *Sec. Co. v. Panhandle Nat. Bank*, 93 Texas, 575; 57 S. W. 22; *Missouri Coal Mining Co. v. Ladd*, 160 Mo. 435; 61 S. W. 191; *Payson v. Withers*, 5 Biss. 269; Fed. Cas. No. 10864; *Hope Mut. Life Ins. Co. v. Perkins*, 38 N. Y. 404; *Hart v. Livermore*

*Co.*, 72 Miss. 809; 17 So. 769; *Kilgore v. Smith*, 122 Pa. St. 48; 15 Atl. 698; *United States v. Company*, 29 Fed. 17.

<sup>3</sup> *Mandel v. Company*, 154 Ill. 177; 40 N. E. 462; *Smith v. Little*, 67 Ind. 549.

<sup>4</sup> *T. L. Co. v. Holbert*, 5 N. Y. Ap. Div. 559; *Novelty Mfg. Co. v. Connell*, 88 Hun, 254; *M. I. W. C. & S. Co. v. Mosher*, 114 Mich. 64; 72 N. W. 117; *F. & J. M. Co. v. Foster*, 4 Dak. 329; *J. S. L. Co. v. Chappell*, 184 Ill. 539; 56 N. E. 539; *Gale Mfg. Co. v. Finkelstein*, 22 Tex. Civ. Ap. 241; 54 S. W. 619; *Toledo Commercial Co. v. Company*, 55 O. St. 217; *Wolff Dryer Co. v. Bigler*, 192 Pa. St. 466; 43 Atl. 1092; *Droege v. Company*, 163 N. Y. 466; 57 N. E. 747.

tional grounds here referred to have reference to those trading or quasi-public corporations engaged wholly in interstate trade and commerce and therefore not subject to regulation by State enactments.<sup>1</sup> The same rule applies where the corporation is in the employ of the general government.<sup>2</sup>

(5) Foreign corporations may take mortgages by way of investment or as security, or may take real estate as security or otherwise without coming within the prohibition of the statute, provided such acts are not within the express purposes for which such corporations were created, as for example where they are engaged in the mortgage loan or real estate business.<sup>3</sup>

(6) Foreign corporations may take property by devise in foreign jurisdictions, if their charter authorizes it, either expressly or by implication, without coming within the purview of the statute.<sup>4</sup>

(7) The mere fact that a corporation pays rent for offices for its agent employed to solicit orders in the foreign State does not in itself prove that the corporation is transacting business within the foreign State.<sup>5</sup> The question in all such cases is whether it is actually transacting business within the foreign State, and not whether some incident preliminary to the transaction of such business is to be performed there.<sup>6</sup> The maintenance of an office within the State may be considered as a circumstance done in connection with others to show that a foreign corporation is transacting business in the State, but it is by no means conclusive of the question.<sup>7</sup>

(8) Where a foreign corporation consigns goods to persons in a foreign State to sell, and sales are made there by the factor in his own name and the proceeds collected by him, this does not

<sup>1</sup> *Robbins v. Shelby County Tax District*, 120 U. S. 489; *Brennan v. Titusville*, 153 U. S. 289.

<sup>2</sup> *Horn Silver Mining Co. v. New York*, 143 U. S. 305.

<sup>3</sup> *C. U. A. Co. v. Scammon*, 102 Ill. 46; *Bard v. Poole*, 12 N. Y. 495; *A. M. L. I. Co. v. Owen*, 15 Gray (Mass.), 491; *Black v. Colwell*, 83 Fed. 880; *C. O. L. I. Co. v. Sawyer*, 44 Wis. 387; *Fritts v. Palmer*, 132 U. S. 288; *Bank v. Sherman*, 28 Ore. 577; 43 Pac. 658; *Simplex Dairy Co. v. Cole*, 86 Fed. 739; *Gilchrist v. Company*, 47 Fed. 593; *C. P. E. Co. v. Company*, 152 Mass. 432; 28 N. E. 300; *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727; 28

L. E. 1137; *F. B. D. G. Co. v. Lester*, 60 Ark. 120; 29 S. W. 34.

<sup>4</sup> *Am., etc. Christian Union v. Yoant*, 101 U. S. 352; *Santa Clara Female Academy v. Sullivan*, 116 Ill. 375; 6 N. E. 183; *Lewisburg Baptist University v. Tucker*, 31 W. Va. 621; 8 S. E. 410; *Chamberlain v. Chamberlain*, 43 N. Y. 444.

<sup>5</sup> *People ex rel. Brewing Co. v. Roberts*, 22 N. Y. Ap. Div. 284.

<sup>6</sup> *Tallapoosa Lumber Co. v. Holbert*, 5 N. Y. Ap. Div. 516.

<sup>7</sup> *People v. Company*, 175 N. Y. 76; *American Broom & Brush Co. v. Addicks*, 19 N. Y. Misc. Rep. 36.

constitute doing business within the foreign State within the meaning of the statute.<sup>1</sup>

(9) The renting of an office in a foreign jurisdiction in charge of a selling agent who distributes therefrom samples to customers and to travelling agents whose salaries are paid therefrom, together with the keeping of a bank account in such jurisdiction, does not necessarily constitute doing business within the foreign State within the meaning of the statute.<sup>2</sup>

Finally, in addition to the foregoing rules, it may not be without value in this connection to call particular attention to a few cases which seem to throw considerable light upon the general subject of what constitutes the transaction of business within a foreign State within the meaning of the Statutes already referred to. Attention is first called to the case of *People ex rel. Kellogg Paper Co. v. Roberts*.<sup>3</sup> Here an Illinois corporation furnished printed matter to local publishers in the State of New York. It kept solicitors in the State of New York to secure advertising patronage for a newspaper published by it in Chicago. For this purpose it had an office in the State of New York with a manager and five clerks. It also kept a New York bank deposit from which rent and salaries were paid amounting to an annual expense of \$13,000. It had office furniture in the State of New York valued at \$700. It was held that the corporation had no capital employed in the State of New York which rendered its capital stock liable to assessment for taxation. The court in its opinion stated:

"Office conveniences are permitted here to a foreign corporation doing business in another State to solicit orders to be executed in the other States without liability to our franchise tax. In *People ex rel. Smith Co. v. Roberts*,<sup>4</sup> the court held that office leases, bank accounts, and the keeping of samples within the State by foreign corporations were nominally incidental to the business of soliciting orders and making sales which the relator could carry on in the foreign State without being liable to taxation. It also observed that the machinery with which an interstate business is carried on is to some extent erected within the State and does not make such business taxable there."

<sup>1</sup> *Bertha Zinc & Mining Co. v. Clure*, 7 N. Y. Misc. Rep. 128. Ap. Div. 13; *People ex rel. v. Roberts*, 29 N. Y. Ap. Div. 585.

<sup>2</sup> *Washington Mills Co. v. Roberts*, 8 N. Y. Ap. Div. 201; affirmed in 151 N. Y. 619; *People ex rel. v. Roberts*, 25 N. Y.

<sup>3</sup> 30 N. Y. Ap. Div. 150.  
<sup>4</sup> 27 N. Y. Ap. Div. 455.

In *Vaughan Machine Co. v. Lighthouse*,<sup>1</sup> the testimony showed that a foreign corporation had sold merchandise in New York both by agents and by correspondence, and in this case it had no office within the State. Upon the question whether this constituted the transaction of business within the State, the court spoke as follows:

“The statute does not intend to relate to business conducted in the manner just referred to. It contemplates a location, a domicile, having an office and the investment of some part of its capital within the State. Orders can then be transmitted and dealings had with it at this office and the conduct of its business is thus transferred, in a measure at least, to the headquarters established within the territorial limits of this State. It thus settles within the State, and enjoys the benefits incident to a domestic corporation, and the legislature imposes requirements and obligations upon it by reason of the privilege conferred of doing business like a body corporate organized in this State. It was never intended to hamper trade and restrict interstate commerce by bringing within its ban every corporation which happens to cross the State boundary with its wares to supply customers who have ordered them from the home office.

“ . . . It must be kept in mind that it was not designed to fetter or exclude business from the State. Its aim was to require a foreign corporation, which was on a level in its privileges with one organized here, to bear the burdens and be equally accessible to process with State corporations. To give it the construction contended for by the defendant would interfere with that comity between the States in their trade relations which has been potential in the development of our commercial and industrial business.”

In *Cummer Lumber Company v. Insurance Company*,<sup>2</sup> the court spoke as follows:

“This statute — relative to foreign corporations obtaining a permit to do business in this State — was simply declaratory of the policy of the State that foreign stock corporations should not carry on any business in this State which similar corporations organized under its laws could not lawfully conduct. Its purpose was not to avoid contracts, but to provide an effective supervision and control of the business proposed to be carried on here by foreign corporations, and it is absurd to contend that it had no reference to the facts established by the evidence in the case at bar.”

<sup>1</sup> 64 N. Y. Ap. Div. 138.

<sup>2</sup> 67 N. Y. Ap. Div. 151.

Again, the court said:

"The scope of the law here under consideration is that of merely undertaking to regulate the business of foreign corporations so that they shall not do business under more advantageous terms than those allowed to corporations of this State. It has no relation whatever to the incidental contracts of a foreign corporation made with a domestic corporation, such as the insurance of the property of a lumber company organized under the laws of Florida and doing business in that State."

Finally, attention is called to *People ex rel. Dives Pelican Company v. Feitner*.<sup>1</sup> In this case a corporation organized under the laws of the State of Colorado had its principal place of business in the State of New York and had an office in the City of New York. The New York office was maintained for the sole purpose of enabling the directors of the corporation to meet in it and declare dividends on its stock. No goods of the corporation were sent to or sold in New York. It had no bills receivable in New York, and the only assets which it had in that State were office furniture and money on hand and in bank which had been sent from its principal office to its New York office for the purpose of paying dividends. It was held that the corporation was not doing business in the State of New York within the meaning of the statute.

§ 180. **Penalty for transacting Business in a Foreign State without obtaining a Permit.**—The statutes of the various States differ materially with respect to the penalty that attaches to the transaction of business by a foreign corporation without having first complied with the statute relative to obtaining a permit to transact the same. The form of penalty prescribed usually takes one of five forms, to wit:

(1) Suspending the right to maintain suits in the courts of the foreign State until the statute has been complied with. (2) Statutes absolutely prohibiting the right to bring suit on contracts entered into in the foreign State before the obtaining of a permit to do business therein. (3) Statutes providing that all contracts made by a foreign corporation before obtaining a permit to do business in a foreign State shall be absolutely void. (4) Statutes providing penalties in certain designated amount for failure to

<sup>1</sup> 77 N. Y. Ap. Div. 189.

obtain a permit in a foreign State before transacting business therein. (5) Statutes merely giving the right to the State to bring proceedings to oust or exclude foreign corporations from doing business within the foreign State without having first obtained a permit so to do. Each of the foregoing will now be taken up briefly for separate consideration.

(1) *Suspending the right to maintain suits in the courts of the foreign State until the statute has been complied with.* Such statutes do not affect the validity of contracts previously made in the foreign State by a foreign corporation, but merely prevent it from enforcing the same therein until it has obtained a permit to do business in such State.<sup>1</sup>

(2) *Statutes absolutely prohibiting the right to bring suit on contracts entered into in the foreign State before the obtaining of a permit to do business therein.* Such statutes exist in New York and read as follows:

“No foreign corporation now doing business in this State shall do business herein after December 31st, 1892, without having procured such certificate from the Secretary of State; but any contract previously made by the corporation may be permitted and enforced within the State subsequent to such date. No foreign stock corporation doing business in this State shall maintain any action in this State upon any contract made by it in this State unless prior to the making of such contract it shall have procured a certificate.”

In interpreting this provision of the statutes the Supreme Court, in *Dunbarton Flax Spinning Co. v. Greenwich and Johnsonville Railway Company*,<sup>2</sup> spoke as follows:

“Unless prohibited by law, a foreign corporation, duly organized, can come into this State and exercise the legitimate powers conferred upon it and carry on any business not prohibited by our laws or against public policy. The State has the power, however, to compel compliance with its laws or to punish the corporation if it does not do so. And the legislature can deny to such corporation failing to comply with its laws by procuring a certificate and paying the license fee, all recourse to its courts to enforce its rights or to redress its wrongs. These statutes are, however, mere revenue regulations,

<sup>1</sup> *Goddard v. Creffields Mills*, 75 Fed. v. *Fowler Bros.*, 163 N. Y. 580; 57 N. E. 818; 21 C. C. A. 530; *Davis Provision Co.* 1108.

<sup>2</sup> 87 Ap. Div.(N. Y.) 21.

compliance with which is made necessary in order to acquire the right to do business here and to enforce causes of action in our courts.

“In *Lancaster v. A. I. Co.*<sup>1</sup> it is said to be the policy of the State to encourage foreign corporations to enter its boundaries for the transaction of lawful business, and it is manifestly for the interest of the State that foreign capital should be actively employed within its borders.”

(3) *Statutes providing that all contracts made by a foreign corporation before obtaining a permit to do business in a foreign State shall be absolutely void.* To have the effect stated above the statute must in express terms declare that contracts made by corporations which have not complied with the statute relative to obtaining a permit to do business within a foreign State, shall be absolutely void. Where such is the case, it is entirely clear that no action can be maintained by the corporation thereon in such foreign State.<sup>2</sup> Such statutes, however, have no extra-territorial effect.

In an Illinois case<sup>3</sup> the court spoke as follows :

“To permit the company, when they admit that they have disregarded all these requirements, to recover, would be for the courts to disregard the clearly expressed will of the general assembly, and to say what it has said shall be unlawful is and shall be lawful and binding. To enforce the payment of this note would be, virtually, to repeal a plain enactment of the legislature. When the legislature prohibits an act, or declares that it shall be unlawful to perform it, every rule of interpretation must say that the legislature intended to interpose its power to prevent the act, and, as one of the means of its prevention, that the court shall hold it void. This is as manifest as if the statute had declared that it should be void. To hold otherwise would be to give the person, or corporation, or individual the same rights in enforcing prohibited contracts as the good citizen who respects and conforms to the law. To permit such contracts to be enforced, if not offering a premium to violate law, certainly withdraws a large portion of the fear that deters men from defying the law. To do so places the person who violates the law on an equal footing with those who strictly observe its requirements. That this contract is absolutely void, as to appellee, we entertain no doubt.”<sup>4</sup>

<sup>1</sup> 140 N. Y. 576, 591 ; 35 N. E. 964.

<sup>2</sup> C. M. H. A. Co. v. Rosenthal, 55 Ill. 85.

<sup>3</sup> Bank of Louisville v. Young, 37 Mo.

<sup>4</sup> See also McCanna & Fraser Co. v. Company, 74 Fed. 597.



(4) *Statutes providing penalties in certain designated amounts for failure to obtain a permit in a foreign State before transacting business therein.* In this connection two opposing lines of authority are to be met with, one holding that where a penalty is imposed, this is exclusive, but does not render the contract made by the foreign corporation, out of which the imposition of the penalty arose, invalid.<sup>1</sup> The other, and what appears to us the better, view is that although a specific penalty is provided, this in itself operates to render the contract, out of which the imposition of the penalty arose, illegal and unenforceable in the courts of such foreign State.<sup>2</sup>

(5) *Statutes merely giving the right to the State to bring proceedings to oust or exclude foreign corporations from doing business within the foreign State without having first obtained a permit so to do.* Unless some other remedy is prescribed by statute, the proper remedy, in case foreign corporations engage unlawfully in business in a foreign State, is for the State to bring *quo warranto* proceedings to oust or exclude such foreign corporation from doing business within the foreign jurisdiction.<sup>3</sup> In such proceedings the courts have the right to review, if they see fit, the action of the Secretary of State in issuing a permit to such foreign corporation to do business within the State.<sup>4</sup>

§ 181. **License Tax on Foreign Corporations.**— There is a clear distinction to be observed of course between the creation of a corporation under State authority and the licensing of a corporation already existing, to do business within the jurisdiction of such State.<sup>5</sup> Sometimes the statute provides that after foreign corporations have complied with certain formalities relative to obtaining a permit to do business within a foreign State, they shall thereby *ipso facto* become domestic corporations. Under such a statute it has been held that they thereby become for all purposes, except for such matters as pertain to federal affairs, domestic corporations and not mere licensed corporations.<sup>6</sup> It

<sup>1</sup> *Clarke v. Middleton*, 19 Mo. 54; *Garratt Ford Co. v. Company*, 20 R. I. 189; *517; 60 N. W. 121; State v. Company*, 39 Minn. 538; 41 N. W. 108.

<sup>2</sup> *J. C. M. T. Co. v. Willhoit*, 84 Fed. 514.

<sup>3</sup> *Dudley v. Collier*, 87 Ala. 431; 16 So. 304; *C. M. H. A. Co. v. Rosenthal*, 55 Ill. 85; *State v. Briggs*, 116 Ind. 55; 18 N. E. 395; *Buxton v. Hamblen*, 32 Me. 448; *Stewart v. Company*, 38 N. J. Law, 436.

<sup>4</sup> *State v. Company*, 47 O. St. 167; 24 N. E. 392; *State v. Company*, 91 Iowa,

<sup>4</sup> *State v. Company*, 49 O. St. 440; 31

N. E. 658; *State v. Company*, 91 Iowa, 517; 60 N. W. 121.

<sup>5</sup> *C. B. & Q. Ry. Co. v. Harris*, 12 Wall. U. S. 65.

<sup>6</sup> *Debnam v. Company*, 126 N. C. 831; 36 S. E. 269.

has been repeatedly held by the United States Supreme Court that State legislatures may impose license taxes to any amount upon foreign corporations as a condition to the granting of the right of such foreign corporations to transact business in a foreign State.<sup>1</sup>

In addition to the payment of a tax, there are a number of other requirements in force in the various States differing one from the other, such, for example, as requiring the filing of a copy of the articles of incorporation, appointing an agent within the State to accept and receive service of process, etc. Such requirements if reasonable are valid.<sup>2</sup>

The State may, if it choose, tax without restriction as to amount or entirely prohibit a foreign corporation from doing business within the State, provided, however, it is not engaged in interstate commerce or is in the employ of the general government.<sup>3</sup> Some States, such for example as Ohio, New Jersey, and Nevada, adopt what are known as retaliatory statutes. The purpose of such statutes is to place foreign corporations which do business in foreign States under the same regulations as are imposed by the domiciliary State upon foreign corporations seeking to do business within such State.<sup>4</sup>

The power of a State to exclude foreign corporations from transacting business within its borders cannot be questioned, neither can its motives in so doing.<sup>5</sup>

Thirty-three of the States have imposed the payment of license taxes upon foreign corporations desiring to do business within the foreign State.<sup>6</sup>

§ 132. **Annual License Tax on Foreign Corporations.** — The right of a State to impose an annual license tax on foreign corporations transacting business within its borders is unequivocally established by the decision of the Supreme Court of the United States

<sup>1</sup> *Paul v. Virginia*, 8 Wall. 168; *P. C. S. M. & N. Co. v. Pennsylvania*, 125 U. S. 181; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 576; *Pembina Min. Co. v. Pennsylvania*, 125 U. S. 184.

<sup>2</sup> *Huffman v. Company*, 13 Tex. Civ. Ap. 169; 36 S. W. 306; *E. & S. A. M. & I. Co. v. Hardy*, 93 Texas, 289; 55 S. W. 169; *Utley v. Company*, 4 Col. 369; *Green v. Association*, 105 Iowa, 628; 15 N. W. 935; *Hamme v. Company*, 130 U. S. 291.

<sup>3</sup> *Horn Silver Mining Co. v. N. Y.*, 143 U. S. 305; *Pierce v. People*, 106 Ill. 11; *State v. Phipps*, 50 Kan. 609; 31 Pac. 1097.

<sup>4</sup> *State v. Reinmund*, 45 O. St. 214; 13 N. E. 30; *Miles v. Woodward*, 115 Cal. 308; 46 Pac. 1076; *State v. Company*, 39 Minn. 538; 41 N. W. 108.

<sup>5</sup> *Doyle v. Company*, 94 U. S. 535; *Hartford Fire Ins. Co. v. Raymond*, 70 Mich. 485; 38 N. W. 474.

<sup>6</sup> See Part III. Table 13, page 583.

in *Horn Silver Mining Co. v. State of New York*.<sup>1</sup> Upon the subject just referred to, that court spoke as follows:

"The right and privilege, or the franchise, as it may be termed, of being a corporation, is of great value to its members, and is considered as property, separate and distinct from the property which the corporation itself may acquire. According to the law of most States this franchise or privilege of being a corporation is deemed personal property and is subject to separate taxation. The right of the States to thus tax it has been recognized by this court and the State courts in instances without number. It was said, in *Delaware Railroad Tax*,<sup>2</sup> that 'the State may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed, and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion,' except, we may add, as that discretion is controlled by the Organic Law of the State. And, as we there said also, 'it is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the Legislature of the State; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction.'

"The granting of the rights and privileges which constitute the franchises of a corporation being a matter resting entirely within the control of the legislature, to be exercised in its good pleasure, it may be accompanied with any such conditions as the legislature may deem most suitable to the public interests and policy. It may impose as a condition of the grant, as well as, also, of its continued exercise, the payment of a specific sum to the State each year, or a portion of the profits or gross receipts of the corporation, and may prescribe such mode in which the sum shall be ascertained as may be deemed convenient and just. There is no constitutional inhibition against the legislature adopting any mode to arrive at the sum which it will exact as a condition of the creation of the corporation or of its continued existence. There can be, therefore, no possible objection to the validity of the tax prescribed by the statute of New York, as far as it relates to its own corporations. Nor can there be any greater objection to a similar tax upon a foreign corporation doing business by its permission within the State. As to a foreign corporation — and all corporations in States other than the State of its creation are

<sup>1</sup> 143 U. S. 305.

<sup>2</sup> 85 U. S. (18 Wall.) 206.

deemed to be foreign corporations — it can claim a right to do business in another State to any extent, only subject to the conditions imposed by the laws.

“This doctrine has been so frequently declared by this court that it must be deemed no longer a matter of discussion, if any question can ever be considered at rest.

“Only two exceptions or qualifications have been attached to it in all the numerous adjudications in which the subject has been considered, since the judgment of this court was announced more than half a century ago in *Bank of Augusta v. Earle*.<sup>1</sup> One of these qualifications is that the State cannot exclude from its limits a corporation engaged in interstate or foreign commerce, established by the decision in *Pensacola Teleg. Co. v. Western U. Teleg. Co.*<sup>2</sup> The other limitation upon the power of the State is, where the corporation is in the employ of the general government, an obvious exception, first stated we think by the late Mr. Justice Bradley in *Stockton v. Baltimore & N. Y. R. Co.*<sup>3</sup> As that learned justice said, ‘If Congress should employ a corporation of ship-builders to construct a man of war, they should have the right to purchase the necessary timber and iron in any State in the Union.’ And this court, in citing this passage, added, ‘without the permission and against the prohibition of the State.’<sup>4</sup>

“Having the absolute power of excluding the foreign corporation, the State may, of course, impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient; and it may make the grant or privilege dependent upon the payment of a specific license tax, or a sum proportioned to the amount of its capital. No individual member of the corporation or the corporation itself can call in question the validity of any exaction which the State may require for the grant of its privileges. It does not lie in any foreign corporation to complain that it is subjected to the same law with the domestic corporation. The counsel for the appellant objects that the statute of New York is to be treated as a tax law, and not as a license to the corporation for permission to do business in the State. Conceding such to be the case, we do not perceive how it in any respect affects the validity of the tax. However it may be regarded, it is the condition upon which a foreign corporation can do business in the State, and in doing such business it puts itself under the law of the State, however that may be characterized.”

<sup>1</sup> 13 Peters (U. S.), 519.

<sup>2</sup> 96 U. S. 1.

<sup>3</sup> 32 Fed. Rep. 9.

<sup>4</sup> *Pembina Con. S. Min. & Mill. Co. v. Pennsylvania*, 125 U. S. 181.

From the foregoing opinion it is clear that it is unquestionably within the power of the various State legislatures to impose an annual license tax upon foreign corporations transacting business within their limit. However, but few of the States have chosen thus far to exercise this power. Alabama, Colorado, Massachusetts, New York, Ohio, Oregon, Texas, Vermont, Virginia, Washington, and West Virginia are the only States which impose an annual license tax upon foreign corporations. In each of these States the tax is a graduated one, the amount thereof depending either upon the authorized capitalization of the corporation, or the amount of the capital stock represented by capital invested in the foreign State where such annual license tax is imposed.

§ 133. **To what Extent is the Taxing Power of the State with Reference to Domestic and Foreign Corporations Engaged in Interstate Commerce Limited by the "Commerce Clause" of the Federal Constitution?** — The question as to the extent of the legislative power of the various State legislatures with reference to taxing domestic and foreign corporations must always be arrived at by giving due consideration to the limitations imposed upon this power by the provisions of what is known as the "Interstate Commerce Clause of the Federal Constitution."<sup>1</sup>

Again, this question, in order to permit of intelligent consideration, must be viewed from four standpoints, to wit: (1) What effect, if any, has the Interstate Commerce Clause of the Federal Constitution upon the right of the several States to impose organization taxes upon corporations engaged in interstate commerce? (2) What effect, if any, has the Interstate Commerce Clause of the Federal Constitution upon the right of the several States to impose franchise taxes upon corporations engaged in interstate commerce? (3) What effect, if any, has the Interstate Commerce Clause of the Federal Constitution upon the right of the several States to impose license taxes upon corporations engaged in interstate commerce? (4) What effect, if any, has the Interstate Commerce Clause of the Federal Constitution upon the right of the several States to impose property taxes upon corporations engaged in interstate commerce? Each of these will now be taken up for separate consideration.

(1) What effect, if any, has the Interstate Commerce Clause of the Federal Constitution upon the right of the several States

<sup>1</sup> See Constitution of the United States, Art. I. sec. 8, clause 3.

to impose organization taxes upon corporations engaged in interstate commerce? The State is said to possess inherent power to tax its corporations. So the State has undoubted power to exact a bonus for the granting of a franchise, payable in advance or *in futuro*.<sup>1</sup> A round sum or an annual charge, with or without reference to capital stock, may be asked by the legislature for such a franchise.<sup>2</sup> In discussing the question of the right of a State to impose a fee, a license or a tax upon corporations, the Supreme Court of the United States in *Ashley v. Ryan*,<sup>3</sup> spoke as follows :

“At the time the articles were presented for filing, the statute law of the State charged the parties with notice that the benefits which it was sought to procure could not be obtained without payment of the tax for consolidation which the Secretary of State exacted. As it was within the discretion of the State to withhold or grant the privilege of exercising corporate existence, it was as a necessary resultant also within its power to impose whatever conditions it might deem fit as prerequisite to corporate life. The act of filing, constituting, as it did, a claim of a right to the franchise granted by the State law, carried with it a voluntary assumption of any burden with which the privilege was accompanied, and without which the right of corporate existence could not have been procured. Having thus accepted the act of grace of the State and taken the advantages which sprang from it, the corporation cannot be permitted to hold on to the privilege or right granted and at the same time repudiate the condition by the performance of which it could alone obtain the privilege which it sought. That the right to be a State corporation depends solely upon the grace of the State and is not a right inherent in the parties, is settled.

“ . . . It follows from these principles that a State in granting a corporate privilege to its own citizens, or, what is equivalent thereto, in permitting a foreign corporation to become one of the constituent elements of a consolidated corporation organized under its laws, may impose such conditions as it deems proper, and that the acceptance of the franchise in either case implies a submission to the conditions without which the franchise could not have been obtained.”

The right of the State to impose such taxes upon the organization of a corporation is in no wise affected by the Interstate Commerce Clause of the Federal Constitution ; this, too, even when

<sup>1</sup> *B. & O. R. R. Co. v. Maryland*, 88 U. S. 456.

<sup>2</sup> *Gordon v. Appeal Tax Court*, 3 How. (U. S.) 134.

<sup>3</sup> 153 U. S. 436

the corporation is formed for the express purpose of engaging in interstate commerce. In the words of the United States Supreme Court, "the right and privilege of being a corporation is of great value to its members, as it is considered as property separate and distinct from the property which the corporation may acquire. According to the law of most States this franchise, or privilege of being a corporation, is deemed personal property and is subject to separate taxation. The right of the State to thus tax it has been recognized by this court and the State courts in instances without number."<sup>1</sup>

(2) What effect, if any, has the Interstate Commerce Clause of the Federal Constitution upon the right of the several States to impose franchise taxes upon corporations engaged in interstate commerce? Again, attention is here called to the decisions of the United States Supreme Court relative to the exercise of the power in question. "The granting of the rights and privileges," observes that tribunal, "which constitute the franchises of a corporation, being a matter resting entirely within the control of the legislature, to be exercised in its good pleasure, it may be accompanied with any such conditions as the legislature may deem most suitable to the public interests and policy. It may impose as a condition of the grant as well as also of its continued exercise, the payment of a specific sum to the State each year, or a portion of the profits or gross receipts of the corporation, and may prescribe such mode in which the sum shall be ascertained as may be deemed convenient and just. There is no constitutional inhibition against the legislature adopting any mode to arrive at the sum which it will exact as a condition of the creation of the corporation or of its continued existence. There can be, therefore, no possible objection to the validity of the tax prescribed by the statutes of any State so far as it relates to its own corporations, nor can there be any greater objection to a similar tax upon a foreign corporation doing business by its permission within the State. As to a foreign corporation, it can claim a right to do business in another State to any extent only subject to the conditions imposed by its statutes. Only two exceptions or qualifications have been attached to the foregoing, to wit: One is that the State cannot exclude from its limits a corporation en-

<sup>1</sup> *Horn Silver Mining Co. v. New York*, York, 134 U. S. 594; *Delaware R. R.* 143 U. S. 305; *Home Ins. Co. v. New Tax*, 85 U. S. 206.

gaged in interstate or foreign commerce. The other limitation is that where the corporation is in the employ of the government. Having the absolute power to exclude the foreign corporation, the State may of course impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient; and it may make the grant or privilege dependent upon the payment of a specific license tax or a sum proportioned to the amount of its capital. No individual member of the corporation or the corporation itself can call in question the validity of any exaction which the State may require for the grant of its privileges. It does not lie in any foreign corporation to complain that it is subjected to the same law with the domestic corporation."<sup>1</sup>

In a certain sense the imposition of an organization tax is as much the levying of a franchise tax as the imposition by a State of annual taxes upon corporations in return for the right to exercise their corporate powers within the jurisdiction of the State. The one has been defined to be a "franchise to be," and the other as a "franchise to do."<sup>2</sup>

(3) What effect, if any, has the Interstate Commerce Clause of the Federal Constitution upon the right of the several States to impose license taxes upon corporations engaged in interstate commerce? Strictly speaking, the imposition of a franchise tax has reference only to domestic corporations, while license taxes, when applied to corporations, have reference not only to domestic corporations, but to foreign corporations as well. Foreign corporations, as such, can be taxed by foreign States only upon corporate property situated within such foreign State, or upon the business done there. They cannot be taxed in a foreign State on account of their corporate franchises, as that was not given by the laws of the foreign State but was dependent upon the laws of the State of its creation and had an existence separate therefrom. A corporation may, through its agents, extend its operations into other States, and thus, metaphorically speaking, go there; but it never really travels, and its franchises exist only at the place of its domicile and residence.<sup>3</sup>

<sup>1</sup> Horn Silver Mining Co. v. New York, 143 U. S. 305.

<sup>2</sup> Adams Express Co. v. Ohio, 166 U. S. 224; Home Insurance Co. v. New York, 134 U. S. 600; Reading R. R. v. Pennsylvania, 15 Wall. 296; State R. R.

Tax Cases, 92 U. S. 603; California v. Company, 127 U. S. 1; Society for Savings v. Coite, 6 Wall. 606; Maine v. Ry. Co., 142 U. S. 227.

<sup>3</sup> People v. Equitable Trust Co., 96 N. Y. 387; Plimpton v. Bigelow, 93 N. Y. 592.



On the other hand, there is clear distinction between a license tax and a property tax. The former involves a charge for permission or authority to transact certain business, while the latter, when applied to corporations, is a contribution imposed upon and measured by the property of the corporation.<sup>1</sup>

The right to impose a license tax upon corporations is subject to the following limitation: If the tax is essentially a regulation of interstate commerce and its imposition does not constitute a proper exercise of the police power of the State, then it comes within the inhibition of the Interstate Commerce Clause of the Federal Constitution.<sup>2</sup>

Again, in *Pembina Consolidated Silver Mining & Milling Co. v. Pennsylvania*,<sup>3</sup> the United States Supreme Court spoke as follows:

"The exaction of a license fee to enable the corporation to have an office for the transaction of its business within a foreign State is clearly within the competency of the legislature of that State. The recognition of the foreign corporation's existence in a foreign State, even to the extent of allowing it to have an office within its limits for the use of its officers, agents, and employees, was a matter dependent upon the will of the State. It could make the grant of the privilege conditional upon payment of a license tax and fix the same according to the amount of the authorized capital of the corporation. The absolute power of exclusion includes the right of a conditional and restricted exercise of its corporate powers within the State. The equal protection of the laws which these bodies may claim is only such as is accorded to similar associations within the jurisdiction of the State. The plaintiff in error is not a corporation within the jurisdiction of Pennsylvania. The office it hires is within such jurisdiction, and on condition that it pays the required license tax it can claim the same protection in the use of the office that any other corporation having a similar office may claim. It would then have the equal protection of the law so far as it had anything within the jurisdiction of the State, and the constitutional amendment requires nothing more. The State is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business or hiring offices within its limits, provided always such discrimination does not interfere with any transaction

<sup>1</sup> *Cooley on Taxation*, 2nd ed. pp. 383, 576; *Welton v. Missouri*, 91 U. S. 275; *Emert v. Missouri*, 156 U. S. 296.

<sup>2</sup> *People ex rel. Pennsylvania R. R. v. Wemple*, 138 N. Y. 1.

<sup>3</sup> 125 U. S. 181.

by such corporations of interstate or foreign commerce. It is not every corporation lawful in the State of its creation that other States may be willing to admit within their jurisdiction or consent that it have offices in them; such, for example, as a corporation for lotteries. And even where the business of a foreign corporation is not unlawful in other States the latter may wish to limit the number of such corporations or to subject their business to such control as would be in accordance with the policy governing domestic corporations of a similar character. The States may therefore require for the admission within their limits of the corporations of other States, or of any number of them, such conditions as they may choose, without acting in conflict with the concluding provision of the first section of the Fourteenth Amendment.

"The only limitation upon this power of the State to exclude a foreign corporation from doing business within its limits, or hiring offices for that purpose, or to exact conditions for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the Federal Government, or where its business is strictly commerce, interstate or foreign. The control of such commerce, being in the Federal Government, is not to be restricted by State authority."

In *Waters Pierce Oil Co. v. Texas*<sup>1</sup> it was said that:

"Having no absolute right of recognition in other States, but depending for such recognition and enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

In *Hooper v. California*,<sup>2</sup> conditions imposed upon a foreign corporation were considered, and a statute was sustained, making it a misdemeanor for a person in California to procure insurance for a resident in that State from an insurance company not incorporated under its laws, and which had not filed a bond required by the law of the State. All preceding cases were cited, and it was assumed as settled "that the right of a foreign corporation to engage in business within a State other than that of its creation,

<sup>1</sup> 177 U. S. 28.

<sup>2</sup> 155 U. S. 648; 39 L. Ed. 297.

depends solely upon the will of such other State." And the exception to the rule was stated to be "only cases where a corporation created by one State rests its right to enter another and to engage in business therein upon the federal nature of its business."

A State may tax the franchise of a domestic corporation or impose a license tax upon a foreign corporation, but can only subject a corporation engaged in interstate commerce or in the employ of the general government to such property taxation as only incidentally affects its occupation, as all business, whether of individuals or corporations, is affected by common governmental burdens.<sup>1</sup>

The power to license is a police power, although it may be exercised for the purpose of raising revenue.<sup>2</sup> But the State in the exercise of the police power cannot impede interstate commerce by discriminating taxes.<sup>3</sup>

The question next arises as to what constitutes a proper exercise of the police power on the part of a State. A State may lawfully in the exercise of this power provide for security of lives, limbs, health, and comfort of persons and protection of property, or in regulation of highways, canals, railways, and other commercial facilities, passage of laws to regulate sale of articles deemed injurious to health or morals of community; imposition of taxes on persons residing within the State and upon occupations pursued therein, not directly connected with foreign or interstate commerce or with some other business exercised under authority of the United States and imposition of taxes upon all property within the State mingled with and forming part of the great mass of property therein.<sup>4</sup>

(4) What effect, if any, has the interstate commerce clause of the Federal Constitution upon the right of the several States to impose property taxes upon corporations engaged in interstate commerce?

<sup>1</sup> *Postal Telegraph Co. v. Adams*, 155 U. S. 696.

<sup>2</sup> *Wiggins Co. v. East St. Louis*, 107 U. S. 374.

<sup>3</sup> *Austin v. Tennessee*, 179 U. S. 344; *License Cases*, 5 How. (U. S.) 592.

<sup>4</sup> *Robbins v. Shelby Co. Tax District*, 120 U. S. 493. See also *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. (U. S.)

576; *Philadelphia, etc. Ass'n v. New York*, 119 U. S. 119; *Horn Silver Mining Co. v. New York*, 143 U. S. 305; *Postal, etc. Cable Co. v. Charleston*, 153 U. S. 693; *Martin v. R. R.*, 151 U. S. 677; *Hooper v. California*, 155 U. S. 652; *Bonman v. Railway*, 125 U. S. 491; *Smith v. Alabama*, 124 U. S. 474.

A State may tax corporations for their privileges within the State in lieu of all other taxes, provided the amount is made dependent on the value of its property within the State and payment is not a condition precedent to the right to carry on its business. The tax then becomes a mere property tax and not an interference with interstate commerce.<sup>1</sup>

The existence of federal supervision over interstate commerce is not inconsistent with the power of the State to control its internal commerce and to tax franchises, property, or business of domestic corporations engaged in such commerce, nor with power to tax foreign corporations on property within the State.<sup>2</sup> In this connection it has been well said that

"commerce between the States consists of intercourse and traffic between their citizens and includes the transportation of persons and property, and the navigation of public waters for that purpose as well as the purchase, sale, and exchange of commodities. It makes no difference whether such commerce is carried on by individuals or by corporations. It is true that the property of corporations engaged in foreign or interstate commerce, as well as the property of corporations engaged in other business, is subject to State taxation, provided always it is within the jurisdiction of the State. Where there is jurisdiction on the part of the State neither as to persons nor property, the imposition of a tax is unconstitutional and void. If the legislature of a State enacted that the citizens of another State or country should be taxed in the same manner as the persons within its own limits, and subject to its authority or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action. It has been repeatedly decided, and is settled law, that a tax upon the capital stock of a corporation is a tax upon its property and assets; that it is undoubtedly competent for the legislature to lay a franchise or license tax upon foreign corporations for the privilege of doing business within the State, but that such a tax is in no sense a license tax. It is a fundamental principle that in order to tax the corporation it must have a domicile within the State; that when it is sought to tax capital stock of a corporation, the law imposing such a tax must be construed to mean so much of the capital stock as is measured by the property actually brought within the State by the corporation in the transaction of its business. To the States must be conceded power

<sup>1</sup> *Postal Tel. Co. v. Adams*, 155 U. S. 696.

<sup>2</sup> *Erie R. R. v. Pennsylvania*, 158 U. S. 437.

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to exclude foreign corporations altogether from its borders or to impose a license tax so heavy as to amount to the same thing. They must be denied the power to tax either persons or property not within their jurisdiction.”<sup>1</sup>

<sup>1</sup> Gloucester Ferry Co. v. Pennsylvania, 136 U. S. 120; Ashley v. Ryan, 153 U. S. 196. See also Philadelphia, etc. U. S. 446; Erie R. R. v. Pennsylvania Steamship Co. v. Pennsylvania, 122 U. S. 158 U. S. 437; New York State v. Roberts, 345; Norfolk, etc. R. R. v. Pennsylvania, 171 U. S. 665.

## PART II.

### SYNOPSIS-DIGEST OF THE INCORPORATION ACTS OF THE SEVERAL STATES AND TER- RITORIES OF THE UNITED STATES.

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#### ALABAMA.

(The references are to the Session Laws of 1903, chap. 395, where not otherwise stated.)

1. **Statute under which Business Corporations may incorporate.** — Business corporations are organized under the Act of October 2, 1903, found in the Alabama Session Laws of 1903, chap. 395. Under it corporations may be organized "for any lawful business or businesses of any kind or nature whatsoever."

2. **Incorporators.** — Three or more. There are no residential requirements (Session Laws of 1903, chap. 395, sec. 1).

3. **Contents of the Certificate of Incorporation.** — The certificate must contain :

a. **Name.** — Similarity of names is forbidden. If the name of a person or partnership be assumed, it must be followed by the addition of some word designating the nature of at least one of the businesses to be carried on, followed by the word "Company" or "Corporation."

b. **Purposes.** — The objects for which the corporation is to be formed. Corporations may be formed under the General Act for any purpose whatever, and for as many purposes as desired. The only limitation is that banking and trust company powers cannot be exercised by corporations formed for any other purpose.

c. **Domiciliary Office.** — Location of principal office in the State.

d. **Capital Stock.** — The amount of total authorized capital stock not to be less than \$2,000. There is no maximum limit. The number of shares into which it is divided, also amount of capital stock with which it will commence business, not to be less than twenty-five per cent of the authorized capital, in no case less than \$1,000. If there be more than one class of stock, the certificate must contain a description of the different classes of stock, with the terms on which each class is created.

e. **Subscription Agent.** — The name and post-office address of the officer or agent designated by the incorporators to receive subscriptions to the capital stock.

f. **Incorporators, Directors, and Officers.** — Names and addresses of the incorporators, together with the number of shares subscribed for by each, this representing the amount of capital stock with which the corporation will be

gin business. In addition, the incorporators' names, and names and addresses of the directors and officers for the first year must be given. (See *ante*, sec. 2, and *post*, sec. 12.)

*g. Corporate Existence.* — Duration of corporate existence, which may be perpetual if desired.

*h. Corporate Rules and Regulations.* — Provisions desired for the regulation of the business and for the conduct of the affairs of the corporation, creating and defining the powers of the corporation, the directors and stockholders or any class or classes of stockholders (Id. sec. 2).

NOTE. — Additional statements are required for railway transportation, canal, telegraph, telephone, and public utility corporations (Id. sec. 2, sub. h, i).

**4. Statutory Powers.** — The statute gives to corporations organizing under the General Act the following powers, which being such as existed at common law without any statutory enumeration thereof may be termed "common law powers." They are as follows: (1) The power of succession; (2) to sue and be sued; (3) to make, use, and alter the corporate seal; (4) to adopt by-laws; (5) to purchase and hold real property for the purposes of the organization; (6) to receive and grant by the corporate name; (7) to appoint officers and agents; (8) to borrow money; (9) to issue negotiable paper; (10) to mortgage the corporate property (Id. sec. 72).

*Falconer v. Campbell*, 2 McLean, 195.

In addition to the foregoing statutory enumeration of the common law powers of corporations, the following additional powers are conferred: To hold stockholders' and directors' meetings without the State, provided certain preliminary formalities are observed; to carry on corporate business in other States and foreign countries; to subscribe for, purchase, and hold stock and bonds of other corporations (Id. sec. 7); under certain conditions to operate railroads (Id. sec. 14); to issue bonds and mortgages or create indebtedness without limit with the consent of a majority of the stockholders first obtained (Id. sec. 7); to accept real and personal property in payment of capital stock; to create liens upon the stock of members for debts due the corporation (Id. sec. 7, sub. c). Corporations other than railway, telegraph and telephone, banking, insurance, and trust companies may consolidate with other corporations (Id. sec. 7, sub. j and k, secs. 39-42; see also Laws of 1903, chap. 117). Certain corporations doing a business of a quasi-public nature, but organized under the General Act, may exercise the power of eminent domain (Id. secs. 8 and 9).

Railway, mining, manufacturing, and quarrying corporations may construct, acquire, and operate steamboats, barges, ships for transportation of freight and passengers (Id. sec. 10). They may also subscribe for or aid any other corporation in the construction of a railroad, etc. (sec. 12).

Mining, manufacturing, and quarrying corporations may construct and operate to and from their plants, railways, tramways, canals, tunnels, and roads, and, as common carriers, transport freight and passengers thereon (Id. sec. 14).

Only corporations formed for the transaction of a banking or trust company business can engage in banking within the State (Id. sec. 22).

Corporations also have power to issue preferred stock; to authorize voting by proxy at stockholders' meeting; to forfeit stock for non-payment of assessments (Id. secs. 2, 37; see also Session Laws of 1903, chap. 68; also Id. chap. 111).

**5. Corporate Indebtedness.** — There is no statutory limit upon the amount of indebtedness that may be contracted by a business corporation. To create a bonded indebtedness or increase the same, or to mortgage the real property of the corporation, the vote of the larger amount of stock present and voting at a meeting duly called for that purpose must be had (*Id.* sec. 7, sub. c; sec. 46).

Under the Constitution (Art. XIV. sec. 6) corporations cannot issue bonds except for money, labor done, or money or property actually received, and all fictitious increase of indebtedness shall be void.

*Nelson v. Hubbard*, 96 Ala. 238, 11 Sou. 428; *Dexter v. McClellan*, 116 Ala. 37, 22 Sou. 461.

**6. Procuring the Charter.** — The certificate must be signed by all the subscribers to the capital stock named therein. The statute does not expressly require that the certificate be acknowledged by the subscribers. The certificate must then be filed and recorded in the office of the probate judge of the county where the corporation will have its principal place of business. After it has been recorded the probate judge endorses thereon a certificate of registration. Within ten days after the filing of the certificate in the office of the probate judge, the corporation must cause to be filed in the office of the Secretary of State a statement signed by said probate judge, giving the name of the corporation, the names of its incorporators, the date of the incorporation, the amount of the capital stock, and the name of the county in which located. The certificate must have attached to it a statement under oath by the person authorized by the incorporators to receive subscriptions to the capital stock, which shall show the amount of capital stock which has been paid in and the amount of stock secured by contracts for stipulated labor or services or transfer of property, which amount shall be at least twenty per cent of the stock subscribed for, and in no case less than \$1,000. At the time the certificate is filed with the judge of probate the incorporators must pay the organization tax to the judge of probate (*Id.* secs. 3, 4, 5, and 6). A copy of the subscription list must be also attached to the certificate.

Corporate existence commences as soon as the articles are filed and recorded in the office of the probate judge of the county where the domiciliary office is located and the organization tax and filing fees paid.

*O. W. Co. v. Bliss*, 132 Ala. 253; 31 Sou. 81; *M. & O. Ry. Co. v. P. T. C. Co.*, 120 Ala. 21; 24 Sou. 408; *N. C. Bank v. McDonnell*, 92 Ala. 387; 9 Sou. 149; *Harris v. G. L. Co.*, 128 Ala. 652; 29 Sou. 611; *Bolling & Son v. Le Grand*, 87 Ala. 482; 6 Sou. 332; *Bebb v. Hall & Farley*, 101 Ala. 79; 14 Sou. 98; *C. & C. Co. v. Lumber Co.*, 121 Ala. 340; 25 Sou. 566; *Savage v. Company*, 84 Ala. 103; 4 Sou. 235; *Sparks v. Company*, 87 Ala. 294; 6 Sou. 195.

**7. Organization Tax.** — On capitalization not exceeding \$50,000, \$25; when it exceeds \$50,000 and does not exceed \$100,000, \$50; when it exceeds \$100,000, a fee of \$50 on the first \$100,000, and \$25 on each additional \$100,000 or fractional part thereof (*Id.* sec. 5).

**8. Filing and Recording Fees.** — To the probate judge for recording certificate of incorporation, 15 cents for each one hundred words; for examining the certificate, \$2.50; for issuing statement of incorporation, \$1. To the Secretary of State for filing in his office the statement of incorporation issued by the probate judge, 50 cents; for copies of papers filed with him, 15 cents per hundred words; for any certificate and annexation of seal



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thereto, \$1 (Id. secs. 4 and 6; see also Civil Code of 1896, secs. 1285 and 1977).

9. **Commencing Business.** — Twenty-five per cent of the authorized capital stock of a corporation must be subscribed in good faith, payable in money before the commencement of corporate existence, but subscribers may have the privilege of discharging the same in service, labor, or property at the reasonable value for such services, labor, or property. Twenty per cent of all subscriptions for stock must be actually paid in, and said amount must never be less in the aggregate than \$1,000 (Id. secs. 2 and 4; see also Laws of 1903, chap. 110). Business must be commenced within five years from the date that the charter issues (Id. sec. 37).

10. **Organization Meetings.** — A preliminary organization is effected by the incorporators meeting within the State (by proxy, if desired) and authorizing some person to receive subscriptions to the capital stock of the proposed corporation. After the charter is secured from the State by the compliance with the necessary formalities prescribed by statute (as stated above), the incorporators, who, under the statute, must likewise be subscribers to the capital stock, should sign a written consent to the holding of an organization meeting, fixing the time and place for holding the same. The incorporators should then organize by adopting by-laws and by the transaction of other routine organization business. There is no statutory time prescribed within which this organization meeting must be held, the law simply providing that non-user of corporate franchise for a period of five consecutive years is a forfeiture of such franchises. Immediately after the adjournment of the organization meeting of the incorporators and stockholders, a meeting of the board of directors should be called for the purpose of electing a president, secretary, and treasurer, and such other officers as the by-laws may prescribe.

11. **Meetings, Stockholders' and Directors'.** — In the absence of the written consent of all resident stockholders, stockholders' meetings must be held within the State, but such meetings may be held without the State upon the written consent of such resident stockholders. All corporations holding their stockholders' meetings without the State must give the name and residence within the State of the agent in charge of their principal office within the State, to be signed by the president or secretary of the corporation under the corporate seal. The certificate should then be filed in the office of the Secretary of State and in the office of the probate judge of the county in which it has its principal office. A copy of all proceedings had at stockholders' and directors' meetings held without the State must be deposited with such agent. Written consent of the stockholders residing within the State, for stockholders' meetings to be held without the State when filed in the office of the Secretary of State, shall remain in force until revoked. Directors' meetings may be held within or without the State as the by-laws may provide (Id. sec. 7).

*Brockway v. G. M. L. Co.*, 102 Ala. 620; 15 Sou. 431.

12. **Directors' Qualifications.** — There must be at least three directors, who shall be stockholders and hold office for one year or until their successors are elected. There are no residential requirements (Id. sec. 36).

*Smith v. P. R. Co.*, 30 Ala. 650; *Fitzpatrick v. D. P. Co.*, 83 Ala. 604; 2 Sou. 727.

13. **Stockholders' Liabilities.** — Stockholders are liable for the debts of the corporation only for the unpaid stock owned by them. The corpora-

tion may, by the adoption of a proper by-law, place a lien upon the shares of its stockholders for any debt or liability they may incur to the company (Id. sec. 27).

*Lea v. Company*, 119 Ala. 271; 24 Sou. 28; *Nicrosi v. Company*, 115 Ala. 429; 22 Sou. 147.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate signed by the president and secretary or treasurer. The par value may be any amount (Id. sec. 28).

**15. Preferred Stock.** — Preferred stock is expressly authorized under the new act (sec. 43). If provided for in the original certificate of incorporation, the terms on which it is issued must be therein stated. If subsequent to incorporation it is desired to issue preferred stock, this may be done by the vote of the holders of two-thirds in value of the capital stock outstanding at a meeting called for that purpose. The proceedings of this meeting must be certified to the Secretary of State and filed and recorded in his office. After this has been done, preferred stock, not to exceed two-thirds of the capital stock paid in in cash or property, may be issued. Each stockholder shall be first entitled to the privilege of taking such preferred stock in proportion to the amount of common stock held by him, or a less amount should he desire, before the preferred stock is offered for sale to the public (Id. sec. 43).

**16. Payment of Capital Stock.** — Under the Constitution corporations can only issue stock for money, labor done, or money or property actually received. All fictitious increase of stock is void (Cons., Art. XIV. sec. 6).

All subscriptions to capital stock must be paid in cash, except that, if so provided in the contract of subscription, such subscriptions may be discharged by the rendition of stipulated necessary services, or the performance of stipulated necessary labor, or the transfer of property at the reasonable value thereof. In such cases the subscription list shall state the names of such subscribers, with the nature of the services or labor to be performed and a brief description of the property and when it is to be transferred to the company (Id. sec. 26).

*Bibb v. Hall*, 101 Ala. 79; 14 Sou. 98; *Haas v. Hall*, 111 Ala. 442; 20 Sou. 78; *Paschall v. Whitsett*, 11 Ala. 472; *Spence v. Shapard*, 57 Ala. 598; *Knox v. C. L. Co.*, 86 Ala. 180; 5 Sou. 578; *Fitzpatrick v. P. Co.*, 83 Ala. 604; 2 Sou. 727; *Williams v. Evans*, 87 Ala. 725; 6 Sou. 702; *Parsons v. Joseph*, 92 Ala. 403; 8 Sou. 788; *Beitman v. Steiner*, 98 Ala. 241; 13 Sou. 87; *Perry v. Mill Co.*, 93 Ala. 364; 9 Sou. 217; *L. L. Co. v. Rees*, 103 Ala. 622; 16 Sou. 637; *Powers v. Dimmick*, 115 Ala. 233; 22 Sou. 109; *Elyton Co. v. Company*, 92 Ala. 407; 9 Sou. 129; *Nicrosi v. Drove*, 102 Ala. 648; 15 Sou. 429.

**17. Books.** — It is contemplated by the statute that the books, records, and papers of the corporation shall be kept at the principal office within the State unless the by-laws otherwise provide. The statute gives to all stockholders the right of access to, and inspection and examination of such books, records, and papers at reasonable and proper times (Id. sec. 35). It is specially provided that a stock register shall be kept with an agent in the State, showing list of stockholders, transfers, and hypothecations (Id. sec. 32).

**18. Office and Agent.** — Every corporation must have an office within the State, and an agent in charge thereof upon whom process may be served (Id. sec. 2).

**19. Reports.** — No annual reports are required.

**20. Anti-Trust Statute.** — The State has an anti-trust statute, modelled closely after the New York Act.

*Beitman v. Steiner*, 98 Ala. 241; 13 Sou. 87.

**21. Statutory Ground for Forfeiture of Charter.** — Non-user for a period of five consecutive years is ground for forfeiture of the charter upon proper action taken by the State (Id. sec. 37). Also non-payment of license tax.

*State v. Bank*, 2 Stew. 30; *Curry v. Woodward*, 53 Ala. 371; *M. & O. R. R. Co. v. State*, 29 Ala. 573; *I. & E. Co. v. Locke*, 50 Ala. 332; *State v. R. R. Co.*, 108 Ala. 29; 18 Sou. 801.

**22. Amendments.** — If through misunderstanding or inadvertence occurring at the time of incorporation, the corporation has failed to comply with any of the requirements of the act, the president or other executive head of the corporation may supply such omission or defect by filing in the office of the judge of the probate court in the county in which the corporation was organized a statement in writing, under oath, setting forth the omission or error and supplying or correcting the same (Id. sec. 45).

In regard to material amendments desired after incorporation, the following may be said. Under chap. 106, Laws of 1903, amending sec. 1283 of the Code of Alabama of 1896 (passed March 28, 1903), it is provided that corporations may alter, amend, or extend their charters by filing in the same manner as is provided in the case of original certificates of incorporation a declaration in writing signed by not less than three-fourths in number of stockholders holding not less than two-thirds of the entire outstanding capital stock (or by their attorneys in fact duly authorized), verified both as to the truth of the statements therein contained and as to the genuineness of the signatures thereto by affidavit. Such declaration to contain: (1) date of approval of the original certificate of incorporation; date of filing of any previous amendments thereto; original name, and changes therein, if any, what change of name is desired, if any, and a statement of the amount of capital stock that has been subscribed for or taken. (2) The names of stockholders signing the statement and amount of stock held by each. (3) The purposes of the corporation and nature of the business to be transacted as set forth in the original declaration, and any amendments thereto, and the particular amendments desired. (4) Amount of capital stock as shown by the original certificate of incorporation or subsequent amendments thereto.

The foregoing provisions of law do not seem to have been expressly repealed by the general incorporation act passed in October of the same year by the same legislative body. Under the new act amendments may be had in the following manner:

To increase or decrease the number of directors the consent of the persons holding the larger amount in value of the capital stock, expressed by a vote cast at a regular meeting or at a special meeting called for that purpose, is necessary. The capital stock or bonded indebtedness may be increased by the consent of the persons holding the larger amount in value of the capital stock obtained in favor thereof, at a regular meeting of the stockholders or a special meeting thereof called for that purpose, the notice given of the meeting in either case to state what increase is proposed to be made. If at such meeting the consent of the holders of the larger amount in value of the capital stock shall be given to a specified increase of the capital stock or bonded indebted-

ness, a report thereof, certified by the president or secretary of the corporation, under the corporate seal must be filed and recorded in the office of the judge of probate of the county in which the corporation was organized. A like proceeding is necessary in order to decrease the capital stock, special provision being made as to the manner in which such decrease shall be effected (Laws of 1903, chap. 395, sec. 46).

To change the corporate name, par value of shares, location of principal office in the State, to renew or extend the corporate existence, or to make any other amendments desired, the following course of procedure must be followed. The board of directors shall first pass a resolution declaring that such changes or alterations are desired, and call a meeting of the stockholders to take action thereon. If the holders of the larger amount in value of each class of stockholders having voting powers shall vote in favor thereof, a certificate thereof shall be signed by the president and secretary under the corporate seal, duly acknowledged, and such certificate, together with the written assent signed in person or by proxy, of the stockholders holding a majority in value of each of such classes of stock, shall be filed in the office of the judge of probate of the county where the corporation has its principal place of business. Thereupon the amendment shall be deemed to be effected (Laws of 1903, chap. 395, sec. 47).

*State ex rel. Perkins v. Montgomery Co.*, 102 Ala. 594; 15 Sou. 347.

**23. Renewal of Corporate Existence.** — May be renewed for an additional period of twenty years by compliance with the statute in such case made and provided (Laws of 1903, chap. 105; see also *Id.* chap. 395, sec. 7, sub. n, sec. 47).

**24. Annual Privilege Tax.** — When paid up capital is under \$10,000, \$10; when it exceeds \$10,000 and does not exceed \$25,000, \$15; when it exceeds \$25,000 and does not exceed \$50,000, \$25; when it exceeds \$50,000 and is not over \$100,000, \$50; when it exceeds \$100,000 and does not exceed \$200,000, \$75; when it exceeds \$200,000 and does not exceed \$300,000, \$125; when it exceeds \$300,000 and does not exceed \$400,000, \$170; when it exceeds \$400,000 and does not exceed \$500,000, \$200; when it exceeds \$500,000 and does not exceed \$1,000,000, \$300; when it exceeds \$1,000,000, \$500 (Code, § 4122, as amended by Laws of 1901, Act No. 1151). Tax becomes due October 1st.

**25. Dissolution.** — Dissolution may be effected by an agreement of all stockholders signed and acknowledged, filed and recorded with the probate judge of the county of organization, and published in a newspaper of county of principal place of business four weeks; or (if such agreement cannot be had) holders of two-thirds in value of stock may petition Court of Chancery or other court of competent jurisdiction for dissolution.

*State v. Webb*, 97 Ala. 111; 12 Sou. 377; *McKleroy v. G. L. I. Co.*, 126 Ala. 184; 28 Sou. 660.

**26. Foreign Corporations.** — Under Art. XII, sec. 232 of the Constitution of Alabama, 1901, and under the provisions of sec. 1316 of the Code of Alabama, 1896, no foreign corporation can do business within the State until it has filed with the Secretary of State a written statement, designating its principal office of business within the State, together with a further designation of its own place of business within the State, and naming an agent within the State, located at its own place of business, upon whom as such agent

service of process may be made and all legal notices served for all the purposes contemplated by the laws of the State of Alabama. There must also be filed with the foregoing a certified copy of its articles of incorporation. The statement to be filed must be in writing under the seal of the corporation and signed officially by the president and secretary thereof. The transaction of business by foreign corporations without having first filed the written statement hereinbefore referred to, renders it liable to forfeit and pay to the State the sum of \$1000 (Code of Alabama, 1896, secs. 1318, 1322).

The legislature is directed to provide for the payment of a franchise tax by foreign corporations, to be based upon the actual amount of capital employed within the State. Under sec. 1321 of the Code of Alabama, 1896, foreign corporations are required before engaging in the transaction of business within the State to pay into the Treasury for the use of the State the following fees:

Where the capital stock does not exceed \$50,000, a fee of \$25; where it exceeds \$50,000, but does not exceed \$100,000, a fee of \$50; where it exceeds \$100,000, but does not exceed \$250,000, a fee of \$75; where it exceeds \$250,000, but does not exceed \$500,000, a fee of \$100; where it exceeds \$500,000, but does not exceed \$1,000,000, a fee of \$200; where it exceeds \$1,000,000, a fee of \$150. All corporations or mutual companies which have no capital stock shall pay a fee of \$25.

Under the laws of 1903 (Act 368, p. 295), it is provided as follows:

a. Every foreign corporation, except railroad, telegraph, long-distance telephone, express and sleeping car, life and fire insurance companies, building and loan associations, banks or banking associations, authorized to do business under the general law, shall pay to the judge of probate of the county in which it has a resident agent, a license fee of one-tenth of one per cent for the use of the State, and one-half that sum for the use of the county, for the privilege of exercising its corporate franchises for carrying on its corporate business in such corporate or organized capacity in this State, to be computed upon the basis of the actual amount of capital employed by it within this State. The tax hereby imposed shall be due and payable on the first day of January of each year by every such foreign corporation then doing business in this State. Every foreign corporation not authorized to do business in this State, shall pay to the State Treasurer for the use of the State, a tax of one-tenth of one per cent upon the amount of capital to be actually employed within the State before filing in the office of the Secretary of State the papers necessary to entitle it to do business in the State.

b. The president, or other executive head, and the secretary of every foreign corporation, subject to a tax under this act, shall make a written statement, under their oaths, to the judge of probate, if the tax is payable to him, or to the State Auditor, if payable to the State Treasurer, showing the name of the corporation, the State or county under whose laws it was incorporated, its principal place of business in the State, the total amount of its capital stock, the actual amount of capital employed within this State, if it is a corporation, at the time of the statement, authorized to do business in the State, or the actual amount of capital it is proposed shall be employed in the State, if it is a corporation not then qualified to do business in the State.

c. No foreign corporation which has paid taxes required under this act shall be required to pay taxes imposed by sec. 1321 of the Code. Only one county tax can be collected.

d. No foreign corporation required to pay a tax under this act, shall do any business in the State of Alabama not constituting interstate commerce, or

maintain or defend any action in any of the courts of this State upon a contract made in this State other than contract based upon interstate commerce unless such corporation shall have paid such tax within sixty days after the same became due. Provided that this act shall not apply to foreign corporations engaged in the business of lending money in Alabama.

Under sec. 1322, Code of 1896, such foreign corporation must, at the time of paying its franchise tax into the treasury, file in the office of the State Auditor an instrument of writing under the seal of the corporation and signed officially by the president and secretary thereof, showing the name of the corporation and of the State or county under whose laws it was incorporated, its principal place of business, and the amount of its capital stock.

Under sec. 1323, Code of 1896, the fee required thereunder must be paid once only; but such payment does not relieve any foreign corporation from the duty of complying with the requirements of existing laws. All contracts made in this State by any foreign corporation which has not first complied with the provisions of two preceding sections, shall, at the option of the other party to the contract, be wholly void.

Under sec. 1324, Code of 1898, the provisions of this article do not apply to corporations organized under the laws of the United States, nor to corporations engaging in or transacting business of interstate commerce only within the State.

Hall v. Engine Co., 91 Ala. 363; 8 Sou. 348; Morris v. Hall, 41 Ala. 510; Lucas v. Bank, 2 Stew. 147; Craddock v. Mortgage Co., 88 Ala. 281; 7 Sou. 196; Cook v. Brick Co., 98 Ala. 409; 12 Sou. 918; State v. Bank, 108 Ala. 3; 18 Sou. 533; George v. N. E. M. Sec. Co., 109 Ala. 548; 20 Sou. 331; Electric L. Co. v. Rust, 117 Ala. 680; 23 Sou. 751; Farrior v. N. E. M. S. Co., 88 Ala. 275; 7 Sou. 200; Collier v. Davis, 94 Ala. 456; 10 Sou. 86; Christian v. A. F. L. & M. Co., 89 Ala. 198; 7 Sou. 427; City of Greenville v. G. W. Co., 125 Ala. 625; 27 Sou. 764; Sullivan v. Vernon, 121 Ala. 393; 25 Sou. 600; Beard v. U. & A. P. Co., 71 Ala. 60; Falls v. U. S. S. L. & B. Co., 97 Ala. 417; 13 Sou. 25; McLeod v. Am. F. L. M. Co., 100 Ala. 496; 14 Sou. 409; Chattanooga, etc. Ass'n v. Denson *et al.*, 189 U. S. 408; D. M. & T. I. Co. v. Nixon, 95 Ala. 318; 10 Sou. 311.

## ALASKA.

(The references are to the Act of Congress [Public Act, 135] approved March 2, 1903, unless otherwise stated, Vol. 32, U. S. Revised Statutes, chap. 978, sec. 5, pp. 947-952.)

1. **Statute under which Business Corporations may incorporate.** — The Business Corporation Act of Alaska is found in Acts of Congress No. 135, approved March 2, 1903. Under this act corporations may organize for the purpose of transacting the following lines of business in Alaska only, to wit: railway, street railway, wagon road, canal, flume, telegraph, telephone, mining, fishery, smelting, electric power, lighting, dock, wharfage, elevator, warehouse, hotel, trade, transportation, agricultural, lumbering, and manufacturing companies.

2. **Incorporators.** — Three or more adult persons, all of whom must be *bona fide* residents of the District of Alaska (sec. 1).

3. **Contents of the Articles of Incorporation.** — Articles must contain:

a. *Corporate Name.* — Similarity of names not forbidden (sec. 2).

b. *Purposes.* — Nature and character of the business. May be incorporated for one or more of the purposes above enumerated (*Id.*).

c. *Domiciliary Office.* — Principal place for transacting business.

d. *Duration.* — Time of commencement and period of continuance not to exceed fifty years (*Id.*).

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*e. Capital Stock.* — Amount of capital stock and manner in which the same is to be paid in, and the number and par value of the shares (*Id.* sec. 10).

*f. Indebtedness.* — Highest amount of indebtedness or liability that may be incurred (*Id.*).

*g. Names of Incorporators.* — Names and residences of the incorporators (*Id.*).

*h. Directors.* — Number and names of first board of directors, and also statement as to what officers shall have charge of the management of the corporate affairs and when they shall be elected and their terms of office (*Id.*).

4. **Statutory Powers.** — The statute merely enumerates the common law powers of corporations. The power to remove officers and directors is expressly granted, as well as the right of stockholders to vote by proxy. Stock may be forfeited for non-payment of assessments (secs. 4-6, 10).

5. **Procuring the Charter.** — Incorporators must subscribe and acknowledge written articles of incorporation in triplicate. One of these must be filed and recorded in the office of the Secretary of the District of Alaska and another in the office of the clerk of the district court of the recording division where the principal place of business of the corporation is to be located; the third to be retained in the possession of the corporation. Corporate existence commences as soon as the foregoing steps have been taken (secs. 2-4).

6. **Corporate Indebtedness.** — The corporate indebtedness cannot exceed the capital stock (sec. 17).

7. **Organization Tax.** — There is no organization tax in the District of Alaska.

8. **Filing and Recording Fees.** — The filing and recording fees in the office of the Secretary of the District of Alaska have not yet been fixed by the Attorney-General of the United States. On this subject the Attorney-General of the United States writes as follows:

"The Attorney-General has not prescribed any schedule of fees covering the filing of papers in the office of the Secretary of the District of Alaska, for the reason that it has been and is considered very doubtful whether he is authorized by Section 30, Chapter 1, Title I. of the Act of June 6th, 1900, to do so.

"Under Section 10 of the above-named chapter and title, the Surveyor General, ex officio Secretary of the District, gets a salary of four thousand dollars per annum as full compensation. It seems clear therefore that he (the Secretary) would not be authorized to retain for his own use any fees prescribed by the Attorney-General for services rendered in filing papers in the office of the Secretary. In view of the fact that Congress provided a salaried officer to perform the services rendered by such Secretary, and neither prescribed fees therefor nor provided how the Secretary should account for fees if prescribed by the Attorney-General, it seems that the Attorney-General is not authorized to prescribe fees for such services."

With respect to the fees of the clerks of the courts in the District of Alaska it should be noted that sec. 828 of the Revised Statutes of the United States has been made applicable to the services rendered by clerks of the federal courts. (See also Paragraph 535 of Instructions to United States judges, marshals, attorneys, clerks, and commissioners for the District of Alaska, effective from and after August 1, 1902.) For recording articles in the office of the clerk of the district court of the recording division where the principal place of business of the corporation is to be located, a fee of 15 cents per folio must be paid for such service. (See Public Act No. 150, Title I. sec. 30, approved January 6, 1900.)

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9. **Commencing Business.** — Business may be commenced as soon as the articles are filed in the proper offices and the organization effected (sec. 4).

10. **Organization Meeting.** — The organization meeting must be held in the District of Alaska. Corporations must organize within one month after filing articles of incorporation by the adoption of by-laws (secs. 9-16).

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the District of Alaska. The requirement that a majority of the directors must be residents of the district would ordinarily necessitate holding all meetings of the board of directors there (sec. 6).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be not less than three directors, who shall be stockholders, and a majority shall be residents of the District of Alaska. They are each required to subscribe to an oath of office (sec. 6).

*b. Liabilities.* — Directors are liable for illegal payment of dividends or for the unlawful withdrawal of any part of the capital stock of the corporation (sec. 13).

13. **Stockholders' Liabilities.** — Stockholders are liable only for the amount that remains unpaid upon the par value of their stock (sec. 14).

14. **Stock Certificates.** — Each stockholder is entitled to a stock certificate signed by such officers as the by-laws may prescribe. The par value of stock may be any amount.

15. **Preferred Stock.** — There is no provision for preferred stock.

16. **Payment of Capital Stock.** — Stock may be issued in consideration of money, labor, or property, estimated at its true money value (sec. 14).

17. **Books.** — Books of account, stock books, and record books must be kept at its principal office in Alaska. These are open to the inspection of stockholders (sec. 16).

18. **Office and Agent.** — The office and the principal managing officer or superintendent must respectively be maintained and reside in the District of Alaska (secs. 2, 16).

19. **Reports.** — The president, secretary, and treasurer must annually make out and publish weekly for three weeks a statement showing, first, number of shares of stock outstanding; second, amount paid in on each share; third, actual paid up capital of the corporation; fourth, actual cash value of the property and its location; fifth, statement of debts and liability and a description of the same; sixth, salaries paid officers, manager, and superintendent; seventh, increase or decrease, if any, in the stock, the capital and the liability of the corporation during the preceding year. On or before September 1 of each year there must be filed, in the office of the clerk of the district court of the recording division where the principal office of the corporation is located, a list containing the names of the principal officers, including the president, cashier, secretary, and managing agent (secs. 20, 23).

20. **Anti-Trust Statute.** — There is no anti-trust statute specially applicable to the District of Alaska. (See Anti-Trust Act, U. S. Statutes of 1890, chap. 647.)

21. **Statutory Grounds for Forfeiture of Charter.** — The act does not provide for forfeiture of charters.

22. **Amendments.** — To increase or decrease the capital stock a meeting of stockholders must be called by notice signed by at least a majority of the directors, and published weekly for at least eight consecutive weeks in some established newspaper published at or near the principal place of business of the corporation in the District of Alaska, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to



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which it is proposed to raise or diminish the capital stock. The proposed increase or decrease in stock must be approved by a vote of two-thirds of all the shares of stock. Thereupon a certificate of proceedings, showing compliance with the foregoing provisions, the amount of the capital stock actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be decreased and diminished shall be made out, signed, and verified by the affidavit of the presiding officer and secretary of the meeting, and certified to by a majority of the directors, and filed and recorded in the same manner as original articles of incorporation (sec. 18). In the same manner and upon such additional notice as may be provided in the articles of incorporation or by-laws, any of the general provisions of the articles of incorporation may be amended, and upon a like vote, unless a different vote be required in the articles of incorporation. Thereupon such amended articles must be filed and recorded in the same manner as provided for original articles (sec. 19).

23. **Extension of Corporate Existence.** — There is no provision for the extension of corporate existence.

24. **Dissolution.** — The corporation may be dissolved by the voluntary action of the stockholders taken as provided for in the act (sec. 22).

25. **Annual License Fee.** — There is no annual license fee in the District of Alaska.

26. **Foreign Corporations.** — Under Act of June 6, 1900, chap. 23 of Title III. U. S. Statutes at Large, 1900, pp. 321-528, a foreign corporation, whether created under the laws of the United States or those of any State or Territory of the United States, is required, before doing business within the District of Alaska, to file with the secretary of the district and the clerk of the district court for the division within which the business is to be carried on, an authenticated copy of its charter or articles of incorporation, and a statement verified by oath of the president and secretary of the corporation, and attested by a majority of the directors, showing: name and location of principal place of business without, and also (if it have one) within the district; amount of capital stock; amount thereof paid in in money, and amount paid in any other way, and manner thereof; amount of assets and of what they consist, and actual cash value thereof; liabilities, and if any of its indebtedness is secured, how and upon what property. It must also file with the foregoing papers a certificate under seal of the president, vice-president, or other acting head of the corporation, and the secretary, if there be one, certifying that such corporation has consented to be sued in the courts of the district upon all causes of action arising against it in the district, and that process may be served upon a designated agent residing in the district; and must file therewith written consent of such agent. Such corporation must also annually, within thirty days from July 1, report in substantially the same form required in the foregoing statement and containing similar information.

*Ames v. Kruzner*, 1 Alaska, 598.

## ARIZONA.

(The references cited below are to the Revised Statutes of 1901, unless otherwise stated.)

1. **Statute under which Business Corporations may incorporate.** — The General Corporation Act in force in Arizona went into effect September

1, 1901. It is found in the Revised Statutes of 1901, secs. 764-783 and secs. 909-927, and amendments thereto. It is entitled "Title XIII." Chap. 2 thereof refers to business corporations. In 1903 an act was passed amending secs. 766-770 of the act above referred to. Under it parties may incorporate for any lawful purpose.

2. *Incorporators* (R. S., sec. 764). — Any number of persons may be incorporators. There are no residential requirements.

3. *Contents of Articles of Incorporation*. — The articles of incorporation must contain the following:

a. *Name and Domiciliary Office* (sec. 766). — The articles of incorporation must state the names of the incorporators, name of the corporation, and the principal place of business of the corporation within the Territory. Similarity of names is not expressly forbidden.

b. *General Nature of the Business proposed to be transacted*. — The Territorial Auditor allows as many purposes as may be desired to be inserted in the articles. Special provisions are made for railway, insurance, savings and loan, and eleemosynary corporations.

B. B. Co. v. A. & C. Co., Ariz., 35 Pac. 983.

c. *Capital Stock*. — The amount of the capital stock authorized, and the time when, and conditions upon which, it is to be paid in. Capital stock under this section is without limit as to amount. The par value of the shares may be any amount.

d. *Corporate Existence*. — The time of the commencement and termination of the corporate existence of the corporation. This period is limited by statute to twenty-five years (sec. 771). Corporate existence may be renewed for another period of twenty-five years upon a vote of three-fourths of the stockholders given at a meeting duly called for that purpose (sec. 771).

e. *Officers and Directors*. — The names of the officers or persons by whom the affairs of the corporation are to be conducted, and the times at which they are to be elected. Reference is made in the articles to a board of directors of a designated number, who shall be elected annually by the stockholders. As far as the statute is concerned, one would scarcely know that corporations organized under the General Act were supposed to have a board of directors.

f. *Corporate Liability*. — The highest amount of indebtedness or liability to which a corporation is at any time to subject itself. This liability must not in any case exceed two-thirds of the capital stock (sec. 767).

g. *Annual Meeting*. — This is inserted by inference from sec. 5 of the Amendment of 1903, which requires a statement of the time at which the officers in charge of the affairs of the corporation are to be elected.

h. *Stockholders' Liability*. — Unless the private property of the stockholders is expressly exempt in the articles of incorporation from liability for corporate debts, stockholders are liable for the debts of the corporation in the proportion which their stock bears to the entire capital stock.

i. *Corporate Rules and Regulations*. — While the statute does not authorize the insertion in the articles of any corporate rules and regulations, the Territorial Auditor permits such rules and regulations to be inserted in the articles filed in his office. (See Laws of 1903, Act 88.)

4. *Statutory Powers*. — The statute (sec. 765) enumerates the common law powers of corporations. A sinking fund may be established for the payment of debts (sec. 777). No mining or manufacturing corporation can have the power to operate or construct any railway, tramway, turnpike, or

public highway, except such as lead from their principal work to adjacent streams, railways, or highways (sec. 781).

Debts cannot be contracted for in excess of two-thirds of the authorized capital stock.

*Keyser v. Shuts*, 29 Pac. 386.

5. **Procuring the Charter** (secs. 766-769). — The articles must be signed and acknowledged before some officer authorized to take acknowledgments. Every corporation must record its articles of incorporation in the office of the county recorder of the county where the principal place of business of said corporation within the Territory is located, and a certified copy thereof must be filed in the office of the Territorial Auditor. The articles must be published at least six times in some newspaper published in the county in which the principal place of business is located or works established, and an affidavit of publication must be filed in the office of the Territorial Auditor within three months from date of filing articles with the county recorder, stating that such publication has been made according to law. The statute expressly provides that the corporation may commence business as soon as its articles of incorporation are filed for record in the office of the county recorder and a certified copy with the Territorial Auditor, and its incorporation shall then be complete if the publication is made and an affidavit thereof filed in the office of the Territorial Auditor within three months after date of the filing with the county recorder. The act provides that there shall be no collateral inquiry into the legality of the corporate existence (secs. 770, 780; Laws of 1903, Act 88).

6. **Corporate Indebtedness**. — Must not exceed two-thirds of capital stock (sec. 767).

7. **Organization Tax**. — There is no organization tax imposed.

8. **Filing and Recording Fees**. — For filing articles of incorporation with the Territorial Auditor, \$10; for filing affidavit of publication with same officer, \$3; for issuing certificate of incorporation, \$3; same officer's fees for issuing certified copy of articles, 20 cents a folio and \$1 for certificate and seal; for filing appointment of statutory agent with Territorial auditor, \$3; cost of publishing articles of incorporation of the average length of one thousand words, \$7.50; for recording articles in local county recorder's office where length does not exceed one thousand words, about \$6.10, which includes certified copy for filing in auditor's office.

9. **Commencing Business** (sec. 769). — The corporation may commence business as soon as the articles of incorporation are filed for record in the office of the county recorder, and a certified copy thereof with the Territorial Auditor. The publication of the articles must be made and an affidavit thereof filed in the office of the Territorial Auditor within three months from date of filing same with county recorder (sec. 769). No specified amount of capital stock need be subscribed for or paid in before commencing business. Business must commence within five years from the time the charter is issued (sec. 774).

10. **Organization Meeting**. — In *Chase v. Fleming* (not yet reported) it was held by the Supreme Court of Arizona that all stockholders' meetings should be held in Arizona where the articles do not provide that such meetings may be held outside of the Territory. In the absence of any statute expressly authorizing the holding of organization meetings outside of the Territory, the safer practice is to hold such meetings within the Territory.

11. **Meetings, Stockholders' and Directors'**. — There is no statute au-

thorizing stockholders' meetings to be held without the Territory. With respect to stockholders' meetings, by inserting such a power in the articles of incorporation, it is perhaps safe to hold stockholders' meetings without the State. Directors' meetings may be held within or without the State, as the by-laws may provide. In the absence of any statute giving that right, authority to vote by proxy at stockholders' meetings should be provided for in the articles of incorporation.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There may be any number of directors. They need not be stockholders, and there are no residential requirements.

*b. Liabilities.* — There are no statutory liabilities imposed upon directors.

13. **Stockholders' Liabilities.** — Unless the articles of incorporation specifically exempt them from liability, stockholders are liable for the debts of the corporation in the proportion which their shares of stock bear to the whole capital stock. Stockholders are individually liable to the amount of the unpaid instalments on the stock owned by them or transferred to them for the purpose of defrauding creditors, and an execution against the corporation to that extent may be levied upon the private property of such stockholder (Id. sec. 776).

14. **Stock Certificates.** — The statute does not require specifically the issuance of stock certificates, nor does it prescribe who shall sign the same. This must be regulated by the by-laws. The par value of the stock certificates may be any amount.

15. **Preferred Stock.** — The statute does not expressly authorize the issuance of preferred stock. The Territorial Auditor permits the filing of articles in his office providing for preferred stock.

16. **Payment of Capital Stock.** — The statute is silent as to how the capital stock shall be paid. In the absence of express provisions in the articles authorizing the payment of stock in property or services, stock must be paid for in money or money's worth.

17. **Books.** — The statute does not require that any books shall be kept within the Territory. It does require that a transfer book shall be kept showing the names of the persons by whom and to whom stock transfers are made, the number of shares, and the date of the transfer. It shall also show the original stockholders, their respective addresses, the amount which has been paid in, and all transfers thereof. Such books and records or correct copies thereof, so far as they relate to the items mentioned above, shall be at all times subject to the inspection of any stockholder (Id. sec. 773).

18. **Office and Agent** (Id. sec. 783). — All corporations are required to name in their articles the location of their principal place of business within the Territory. They are also required to appoint a *bona fide* resident of the Territory, who has a residence of three years' standing, as its agent upon whom process may be served within the Territory (Laws of 1903, Act 82).

19. **Reports.** — No annual reports are required.

20. **Anti-Trust Statute.** — There is no anti-trust statute in force in the Territory except such as have been passed by Congress and are in force everywhere.

21. **Statutory Grounds for Forfeiture of Charter.** — The statute provides that persons acting as a corporation under the General Act shall be presumed to be legally organized until the contrary is shown, and no such franchise shall be declared to be actually null and forfeited except in a regular proceeding brought for that purpose (Id. sec. 779). The statute further provides that any corporation organized or attempted to be organized under

## DIGEST OF INCORPORATION ACTS. — ARIZONA.

the General Act shall cease to exist by non-user of its franchises for five years at any one time (Id. sec. 774). Charter may be forfeited for failure to appoint and maintain resident agent (Laws of 1903, Act 88).

22. **Amendments** (Id. sec. 770). — Capital stock may be increased or decreased and articles may be amended in any particular by the affirmative vote of a majority of the stockholders. Such amendments shall be signed and acknowledged by the president and attested by the secretary of the corporation, and must be recorded and published in the same manner as the original articles (Laws of 1903, Act 88).

23. **Annual Franchise Tax.** — There is no annual franchise tax.

24. **Extension of Corporate Existence.** — May extend corporate existence for an additional period of twenty-five years (Id. sec. 771.)

25. **Dissolution.** — Corporations may be dissolved by a majority vote of its members unless a different rule is adopted in the articles of incorporation (Id. secs. 772, 775).

26. **Foreign Corporations.** — Before transacting business in the Territory foreign corporations must file a certified and duly authenticated copy of their articles of incorporation or charter, and the appointment of an agent upon whom service may be served with the Auditor of the Territory and with the county recorder of each county in which it does business or has an office. The appointment of the agent must be in writing, signed by the president and attested by the secretary of the corporation, and be based upon a resolution duly adopted by the board of directors. The agent must have been a *bona fide* resident of the county wherein appointed, for three consecutive years prior to his appointment. The corporation must publish six times in some newspaper published in each of said counties a copy of its articles of incorporation, and upon the expiration of such publication file an affidavit thereof in the office of the Territorial Auditor. The appointment of the agent must be by the board of directors. Fees for filing and recording are the same as for domestic corporations (Id. secs. 909-925).

*Babbitt v. Field*, 52 Pac. 775.

## ARKANSAS.

(The references cited are to Sandels & Hill's Digest, 1894, chap. 47, unless otherwise stated.)

1. **Statute under which Business Corporations may incorporate.** — The General Incorporation Act of Arkansas is to be found in Sandels & Hill's Digest, chap. 47, secs. 1322-1358, 1425-1434, and acts amendatory thereof. Special acts exist for the incorporation of navigation, turnpike, plank road, railway, raft, and booming corporations, as well as those incorporated for eleemosynary purposes.

2. **Incorporators** (Sandels & Hill's Digest, 1894, sec. 1326). — Three or more. There are no residential requirements.

3. **Contents of the Articles of Association** (Id. secs. 1327-1328). — The articles of association must contain:

a. *Name.* — Any name permitted.

b. *Incorporators.* — Names and residences of the incorporators.

c. *Domiciliary Office.* — The location of the principal place of business and the office of the company for the transaction of business within the State.

d. *Purposes.* — Persons desiring to incorporate under the General Act may do so for the purpose of "engaging in, or carrying on, any kind of manu-

facturing, mechanical, or other lawful business" not provided for by the special incorporation acts referred to above.

The General Act was originally framed with the intention of limiting the business to be pursued by the corporation to one purpose (Id. sec. 1334), but in the amendment which took effect February 12, 1903, the word "purposes" is used, which undoubtedly permits corporations to be now formed for more than one line of business. There has been no amendment, however, to sec. 1328, unless the amendment above referred to by implication also amends sec. 1328, which reads as follows: "The purpose for which every such corporation shall be established shall be designated in their articles of association, and it shall not be lawful for such corporation to direct its operations or appropriate its funds for any other purpose." The Secretary of State permits the insertion of as many purposes as are desired, provided they are not covered by special acts.

*e. Capital Stock.* — The amount of capital stock must be stated. There is no limit as to what this amount may be. The amount of capital stock subscribed for by the several incorporators must be set forth, and this should be followed by a provision that the residue of the capital stock may be issued and disposed of as the board of directors may from time to time order and direct.

*f. Number and Par Value of Shares.* — The par value of the shares must be \$25 (Id. sec. 1327).

*g. Directors.* — The number of the directors must be set forth, together with the provision that they shall all be stockholders of the corporation, and to this should be added a provision that the board of directors shall elect one of its members president and another as vice-president, and shall also elect a secretary and treasurer. The number of directors may be any number not less than three. There are no residential requirements, but they must be stockholders, and must be chosen annually by the stockholders at such time and place as shall be provided by the by-laws of the corporation (Id. sec. 1330). The president is a statutory officer and must be a director. The secretary and treasurer are also statutory officers, but need not necessarily be directors. The last two named must reside and have their place of business within the State.

*h. First Election for Directors.* — This clause should provide that the first election for directors shall be held immediately after the organization of the corporation, and that the directors shall serve for one year and until their successors are elected.

*i. Powers of the Board of Directors.* — This clause may provide that the board of directors are empowered to establish all by-laws and regulations necessary to the management of the business and affairs of the corporation and to alter and repeal the same at pleasure.

*j. Organization Meeting.* — This clause should fix a time and place for the holding of the organization meeting, and should contain a waiver by the incorporators of the notice of such meeting.

*k. Corporate Existence.* — Corporate existence under the statute is perpetual. The period of existence is not required to be stated.

**4. Statutory Powers.** — The statutory powers found in the General Incorporation Act are the usual common law powers of corporations (Id. secs. 1336, 1340). There is a statutory lien given the corporation upon the stock of members for debts due it. Voting by proxy is permitted. The right to issue preferred stock is granted (Laws of 1905, chap. 330).

*S. W. Co. v. Bank*, 68 Ark. 234; 57 S. W. 257; *Conway et al. ex parte*, 4 Ark. 302.

5. **Procuring the Charter.** — The articles of association, drawn in accordance with the form above set forth (sec. 3), must be signed by all the incorporators. The statute does not require that the execution of the same should be acknowledged. The incorporators must meet and hold their organization meeting at the time set forth in the articles of association. At that meeting they will proceed to the election of a board of directors and the adoption of by-laws for the corporation. The directors must then meet and elect a president, secretary, and treasurer, and such other officers as the by-laws of the corporation shall prescribe. The corporate existence appears to begin as soon as this last step has been complied with, but the statute provides further (Id. sec. 1334) that before the corporation shall commence business the president and directors thereof shall file a proper copy of their articles of association at full length, and record a certificate setting forth the purposes for which such corporation is formed, the amount of its capital stock, the amount actually paid in, and the names of its stockholders and the number of shares by each respectively owned, with the county clerk of the county in which the corporation is to have its principal place of business, and shall file such articles and certificates bearing the endorsement of the county clerk in the office of the Secretary of State. After recording the same, the Secretary of State is authorized to issue a certificate of incorporation, which certificate or certified copy thereof is *prima facie* evidence of due incorporation (sec. 1344 as amended by Laws of 1903, Act XVIII.).

6. **Corporate Indebtedness.** — There is no limit prescribed by statute to the creation of corporate indebtedness. To create a bonded indebtedness the consent of the larger amount in value of stock must be obtained at a meeting duly called for that purpose. Bonds cannot be issued except for money or property actually received or labor done, and all fictitious increase of indebtedness is void (Cons., Art. XII. sec. 8).

7. **Organization Tax.** — On a capitalization of \$25,000 or less, \$30, and an addition fee of \$5 for each additional \$25,000 of authorized capital stock. The organization tax includes the fee of the Secretary of State for filing articles and issuing charter (Laws of 1905, Act No. 261).

8. **Filing and Recording Fees.** — The organization tax includes the fees of the Secretary of State for filing and recording the articles of association, and also includes the issuance of a certificate of incorporation. The charge for issuing a certified copy of articles of incorporation is 15 cents per hundred words, and \$1 for certificate. This usually amounts to \$2.50. The charge for filing and recording amendments to articles of incorporation is \$10 for filing and 15 cents per hundred words for recording. The fee for filing the articles in the office of the county clerk of the county in which the corporation is to have its principal place of business is 10 cents per hundred words and 50 cents for certificate of filing. This fee usually varies from \$2.50 to \$5.

9. **Commencing Business** (Id. sec. 1334). — Corporations may commence business as soon as the president and board of directors have filed a true copy of the articles of association and the certificate referred to in sec. 5 above.

*Garnett et al. v. Richardson et al.*, 35 Ark. 144; *Conner v. Abbott*, 35 Ark. 365; *Blackwell v. State*, 36 Ark. 178.

10. **Organization Meeting** (Id. sec. 1329). — The organization meeting must be held within the State. Each incorporator is presumed to be a stockholder to at least the extent of one share. It is usual to fix the time and place

for the holding of the organization meeting in the articles of association. In the absence of any such provision, two of the incorporators may call the first meeting at such time and place as they may appoint by giving notice thereof in any one or more newspapers published in the county in which such corporation is to be established or any adjoining county at least fifteen days before the time appointed for such meeting (Id. sec. 1329). The duty of the incorporators is to adopt by-laws and elect a board of directors. Immediately after the incorporators' and stockholders' meeting adjourns, a meeting of the board of directors should be held for the purpose of electing a president, secretary, and treasurer, and such other officers as may be required by the by-laws.

**11. Meeting of Stockholders and Directors** (Id. sec. 1329). — In the absence of any statute providing otherwise, all stockholders' meetings must be held within the State. Directors' meetings, after the first meeting, may be held within or without the State, as the by-laws may provide.

*Bank v. McCarthy*, 55 Ark. 473; 18 S. W. 759; *Blackwell v. State*, 36 Ark. 178.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors who shall be stockholders. There are no residential requirements (Id. sec. 1330).

*Jones et al. v. Jarman*, 34 Ark. 323; *Worthen v. Griffith*, 59 Ark. 562; 28 S. W. 286.

*b. Liabilities.* — Directors are jointly and severally liable for the declaration and payment of a dividend when the corporation is insolvent or the payment of which would render it insolvent, knowing such corporation to be insolvent or that the payment of such dividend would render it so, for all debts due from such corporation at the time of the payment of such dividend. They are also jointly and severally liable for all debts of the corporation contracted during the period when they shall neglect or refuse to comply with any of the provisions of the incorporation act imposed upon them. If, by reason of the violation of any of the provisions of the act by the directors, a corporation shall become insolvent, then all directors ordering or assenting to such violation shall be jointly and severally liable for all corporate debts contracted after such violation (Id. secs. 1347, 1349-1351).

*Simon v. Association*, 54 Ark. 58; 14 S. W. 1101; *Bank v. McCarthy*, 55 Ark. 473; 18 S. W. 759.

**13. Stockholders' Liabilities.** — Stockholders are liable for the debts of the corporation only to the extent of the unpaid stock subscribed for or held by them. The corporation may, by the adoption of a proper by-law, place a lien upon the shares of its stockholders for any debt or liability they may incur to the company. The statute (Id. secs. 1352, 1353) provides a method for the enforcement of this lien. If the capital stock should be withdrawn or refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders are liable to any creditor of the corporation for the amount of the sum refunded to them respectively (Id. 1348).

*Jones et al. v. Jarman*, 34 Ark. 323; *Worthen v. Griffith*, 59 Ark. 562; 28 S. W. 286.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him. Stock certificates may be signed by such officers as the by-laws may provide. The par value of the shares must be \$25, except in the case of railroad corporations, when they may be \$100.



15. **Preferred Stock.** — Under the recent amendment passed by the legislature at the 1905 session, corporations are now expressly authorized to issue preferred stock (Laws of 1905, chap. 330).

16. **Payment of Capital Stock.** — Under the constitution capital stock can be issued only for money and property actually received or labor done (Cons., 1874, Art. XII. sec. 8; Laws of 1903, chap. 253).

*Carter v. Company*, 54 Ark. 576; 16 S. W. 579; *Fletcher v. Bank*, (Ark.); 69 S. W. 580.

17. **Books.** — The books must be kept within the State at the principal office of the corporation therein or at the office of the treasurer within the State (Id. sec. 1341). The statute gives to all stockholders the right to inspect and examine the same (Id. sec. 1341).

18. **Office.** — The corporation must maintain an office within the State, and its secretary and treasurer must reside therein (Id. secs. 1332, 1341).

19. **Reports.** — At least once a year, by order of the directors, a true statement of the accounts of the corporation shall be made to the stockholders (Id. sec. 1341). In addition to this the president and secretary shall annually make a certificate showing the condition of the affairs of the company on the first day of January or of July next preceding the time of the making of the said certificate in the following particulars, to wit: the capital stock paid in, the value of its real estate, its personal estate, cash value of its credits, the amount of its debts, the name and number of shares held by each stockholder. This certificate must be deposited on or before the 15th day of February or August with the county clerk of the county within which said corporation transacts its business, who shall record the same at length in a book to be kept by him for that purpose (Id. 1337). The charge for recording is 10 cents per folio.

*Neb. Nat. Bank v. Walsh*, 68 Ark. 433; 59 S. W. 952.

20. **Anti-Trust Statute.** — Under the Act of March 16, 1897, and March 6, 1899, all trusts or combinations intended to restrain competition in the importation or manufacture of articles of domestic growth, and all such trusts or combinations which tend to advance, reduce, or control the prices or the cost to the consumer, are declared to be against public policy and void.

21. **Statutory Ground for Forfeiture of Charter.** — The only ground for forfeiture of charter prescribed by the statute in Arkansas is for any violation of the anti-trust statute.

*Darnell v. State*, 48 Ark. 321; 3 S. W. 365; *State v. Bank*, 5 Ark. 595; *Blackwell v. State*, 36 Ark. 178; *Brown v. Ry. Co.*, 68 Ark. 134; 56 S. W. 862.

22. **Amendments.** — The power of amendment in Arkansas is broad, but is also somewhat complicated. To reduce the capital stock either by releasing unpaid subscriptions for stock or by returning to the shareholders a portion of the amount paid in by them, such reduction must be made by a resolution duly adopted by a majority of the stockholders, and a copy of such resolution must be filed as amendment to the charter in the offices of the Secretary of State, and the county clerk of the county in which the corporation transacts business, and such amendment must be published once in some newspaper published within the county. To authorize the corporation to engage in additional lines of business, the stockholders must authorize such change by a majority vote at a meeting duly called for that purpose. Then the president and directors shall cause such of the amended articles as specify the purposes for which the corporation is formed, subscribed by the stockholders, to be published in a newspaper printed in the county in which

such corporation is located, or any adjoining county, and shall also make a certificate of the purpose for which such corporation is formed as changed by the amended articles, which certificate shall be signed and deposited and recorded in the same manner as the original certificate. To increase the capital stock such increase must be voted for by a majority of the stockholders at a meeting especially called for that purpose. After the increase is approved the president and directors shall within thirty days thereafter make a certificate thereof which must be signed, deposited, and recorded the same as the original certificate. By the Act of April 11, 1901, a corporation may change its name and number of directors by a resolution of the stockholders duly adopted by a majority thereof at a meeting called for that purpose. A copy of such resolution duly certified by the president and secretary must be filed with the clerk of the county court of the county in which the principal place of business is located, and also with the Secretary of State. To change its principal place of business within the State to a county within the State the president and secretary must procure from the county clerk of the county where it is removed a certified copy of the records, of its articles of association, etc., to which certified copy shall be attached the certificate of such president and secretary that such corporation is thus removed, which certified copy of the certificate must be filed and recorded in the office of the county clerk of the county in which such corporation shall be removed. A similar certified copy of the certificate must be filed in the office of the Secretary in such State. A duplicate copy of such certificate must be published in a newspaper in the county in which such corporation shall be located. If the removal is from one county to another, there must be two publications, one in a newspaper in each county (Id. 1327, 1343, 1357; Laws of 1901, Act 99).

*Brown v. W. & S. E. Ry. Co.*, 68 Ark. 134; 56 S. W. 862.

**23. Annual Franchise Tax.** — There is no annual franchise tax.

**24. Extension of Corporate Existence.** — There is no provision for extension of corporate existence.

**25. Dissolution.** — Corporations may be dissolved by application to the courts having equitable jurisdiction. Any corporation may surrender its charter by resolution of a majority in value of the stockholders, at a meeting duly called for that purpose, and filing a certified copy of such resolution in the office of the Secretary of State, and in the office of the county clerk of the county where the principal place of business of such corporation is located (Id. secs. 1429-1434).

*Town of Searcy v. Yarnell*, 47 Ark. 269; 1 S. W. 319; *Dozier v. A. C. Mills*, 67 Ark. 11; 53 S. W. 403.

**26. Foreign Corporations.** — To transact business within the State, foreign corporations must, through their president, file in the office of the Secretary of State and with the county clerk of the county in which the corporation has an office for the transaction of business, a copy of the articles of incorporation, and shall also file in these offices within six months after the establishment of said office, or of the beginning of said business in the State, a statement showing the proportionate amount of its capital stock which it has in use in the operation of its business, both in the State and in the county in which it is doing business. The penalty for not complying with this provision is that it is cut off from all recourse to the courts and is subject to fine. Such corporation must also, under the hand of the president and seal of the corporation, file in the office of the Secretary of State a designation of

an agent (who must be a citizen of the State) upon whom service of summons and other process may be made. Such certificate shall also state the principal place of business of such corporation within the State. The corporation must also pay into the treasury of the State, the same fees required of domestic corporations. The cost of filing articles and certificates and for certified copy thereof is \$28.50 (Id. sec. 1322-1325; Laws of 1901, Act 216). There is a charge of one dollar additional for filing appointment of agent.

*Gunn v. Company*, 57 Ark. 24; 20 S. W. 591; *Scruggs v. Company*, 54 Ark. 566; 16 S. W. 563; *St. L., etc., Ry. Co. v. Fire Ass'n*, 60 Ark. 325; 30 S. W. 350; *Buffalo Zinc & Copper Co. v. Crump*, 70 Ark. 525; 69 S. W. 572; *W. R. Lumber Co. v. Implement Ass'n*, 55 Ark. 625; 18 S. W. 1055; *Boyington v. Van Etten*, 62 Ark. 63; 35 S. W. 622; *Railway v. Fire Ass'n*, 55 Ark. 163; 18 S. W. 43; *Woodson v. State*, 69 Ark. 521; 65 S. W. 465.

## CALIFORNIA.

(The references cited below are to the Civil Code, unless otherwise stated.)

1. **Statute under which Business Corporations may incorporate.** — The Civil Code of California, Part IV. secs. 283-403, as amended in certain respects by subsequent Session Laws, constitutes the General Incorporation Act of the State of California for business corporations. There are special acts applicable only to insurance, railway, street railway, wagon road, bridge, ferry, wharf, chute, pier, telegraph, telephone, water, canal, homestead, savings and loan, mining, gas, and eleemosynary corporations, but any kind of business corporation may be incorporated under the General Act.

2. **Incorporators.** — There may be any number of incorporators not less than three, a majority of whom must reside in the State (C. C., secs. 285, 292; Laws of 1905, chap. 392).

*People v. Company*, 97 Cal. 276; 32 Pac. 236.

3. **Contents of the Articles of Incorporation** (C. C., sec. 290, as amended by Laws of 1901, chaps. 147 and 201; Laws of 1905, chap. 392). — The articles must contain:

a. **Name.** — The use of a name identical with that or similar to that of an existing domestic corporation is forbidden (C. C., sec. 296; Laws of 1905, chap. 103). The use of the word "trust" is forbidden to all corporations except those organized to transact a trust company business (Laws of 1905, chaps. 259, 279).

*Curtiss v. Murray et al.*, 26 Cal. 633.

b. **Purposes.** — Companies may now be incorporated for any number of purposes not covered by special act (Cons., Art. XIII. sec. 9; Laws of 1905, chap. 392).

c. **Domiciliary Office.** — The location of an office within the State where its principal business is to be transacted.

d. **Corporate Existence.** — The term for which it is to exist not to exceed fifty years.

e. **Directors.** — Number of directors not less than three, together with the names and residences of those appointed for the first year. The directors must be stockholders, and a majority residents of the State (C. C., secs. 290, 305; Laws of 1905, chap. 392).

f. **Capital Stock.** — The amount of capital stock, which may be any amount.

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The number of shares must also be stated, the par value of which may be any amount.

*g. Original Stock Subscriptions.* — The amount actually subscribed and by whom. There need be no particular amount subscribed beyond the one share required for each of the incorporators (Laws of 1905, chap. 392).

*Harris et al. v. McGregor*, 29 Cal. 125; *Ex parte S. v. W. W.* 17 Cal. 132; *People v. Company*, 45 Cal. 306; *People v. Perrin*, 56 Cal. 345; *People v. Company*, 97 Cal. 276; 32 Pac. 236.

**4. Statutory Powers** (C. C., secs. 283, 354, 355). — In addition to the statutory enumeration of the common law powers of corporations (C. C., sec. 354) there are some express limitations upon the ordinary corporate powers. One is the provision that no corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business or the construction of its works. The bonded indebtedness of a corporation may be created or increased by a vote of the stockholders representing at least two-thirds of the subscribed capital stock at a meeting called by the board of directors, and after publishing notice of such meeting once a week for at least sixty days, which notice shall state the amount of bonded indebtedness which it is proposed to create, or the amount to which it is proposed to increase the said indebtedness. The necessity of publication may be obviated by written consents from the holders of two-thirds of the outstanding capital stock (C. C., sec. 359). Domestic mining corporations possessing mining claims adjoining each other may consolidate in such manner and upon such terms as may be agreed upon, provided the written consent of all the stockholders representing two-thirds of the capital stock of each corporation is first obtained, and provided the statutory requirements relative to calling meetings, publishing notice thereof, etc., are complied with (C. C., sec. 361). Only so much real property as is necessary for the transaction of corporate business can be held (C. C., sec. 360; also Session Laws, 1905, chap. 576).

The following additional powers are conferred: To authorize voting by proxy, to permit cumulative voting in the election of directors, and to forfeit stock for non-payment of assessments (Cons., Art. XII. sec. 12; C. C., secs. 307, 312, 331-349; Laws of 1903, chap. 215). Also to sell and dispose of all the corporate assets with the consent of two-thirds of the stockholders (C. C., secs. 364, 584; Laws of 1903, chap. 271; Laws of 1905, chap. 416, sec. 4). Also to remove directors (sec. 310; Laws of 1905, chap. 416). To accept devises (Laws of 1903, chap. 223). By the unanimous vote of all the directors at any regular meeting, corporations may acquire and hold the land and buildings in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business (Laws of 1905, chap. 576). The power of repealing and amending by-laws and of adopting new by-laws may by a two-thirds vote of the stockholders cast at a meeting thereof called for that purpose, or by the written assent of the holders of two-thirds of the stock, be delegated to the board of directors (Laws of 1905, chap. 416).

See *Smith v. Morse*, 2 Cal. 524; *Smith v. Company*, 6 Cal. 1; *Knowles v. Sandercock*, 107 Cal. 629; 40 Pac. 1047; *Tel. Co. v. Tel. Co.*, 22 Cal. 398; *Union Water Co. v. Murphy Co. et al.*, 22 Cal. 621; *P. S. H. Bank v. Sadler*, Cal. App. 81 Pac. 1029.

**5. Procuring the Charter.** — The articles must be signed and acknowledged by each of the three or more incorporators, a majority of whom must be residents of the State (C. C., sec. 292; Laws of 1905, chap. 392). Next, the articles must be filed in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certi-

fied by the county clerk, must be filed with the Secretary of State (C. C., sec. 296). Before the articles can be filed with the latter the organization tax (see below) must be paid. When such tax is paid and the articles duly filed with the Secretary of State, the latter issues to the corporation, over the Great Seal of the State, a certificate that a copy of the articles containing the required statement of facts has been filed in his office, and the statute then provides that the persons signing the articles and their associates and successors shall thereupon be a body politic and corporate by the name stated in the certificate (C. C., sec. 296; Laws of 1901, chap. 201). The due incorporation of any company claiming in good faith to be a corporation, doing business as such, and its right to exercise corporate powers shall not be inquired into collaterally in any private suit to which such *de facto* corporation may be a party, but such inquiry may be had at the suit of the State, except in those cases where the corporation has been doing business for ten consecutive years as a corporation (C. C., sec. 358; Laws of 1901, chap. 206). No corporation may purchase, locate, or hold property in any county in the State other than the county in which its original articles are filed, without filing a copy of the copy of the articles of incorporation filed in the office of the Secretary of State duly certified by him in the office of the clerk of the county in which said property is situated and within sixty days after such purchase or location is made (Laws of 1905, chap. 416).

*Martin v. Deetz*, 102 Cal. 55; 36 Pac. 368; *Rondell v. Fay*, 32 Cal. 354; *Waterworks v. San Francisco*, 22 Cal. 441.

**6. Organization Tax.** — If the capital stock amounts to \$25,000 or less, \$15; over \$25,000 and not over \$75,000, \$25; over \$75,000 and not over \$200,000, \$50; over \$200,000 and not over \$500,000, \$75; over \$500,000 and not over \$1,000,000, \$100; over \$1,000,000, \$50 additional for every \$500,000 or fractional part thereof of capital stock over and above \$1,000,000. The foregoing fees are payable to the Secretary of State upon filing articles in his office (Laws of 1905, chap. 467).

**7. Filing and Recording Fees.** — The Secretary of State is entitled to no additional fee for filing articles of incorporation other than the payment to him of the organization tax, but for recording such articles he is entitled to charge 20 cents per folio. For issuing certificate of incorporation, \$3. For copy of articles of incorporation on file in his office, 20 cents per folio, and for affixing certificate seal of State thereto, \$2. For comparing copy of articles with the original on file in his office, 5 cents per folio. The county clerk is entitled to a fee of \$1 for filing articles of incorporation, and for copy of same 10 cents per folio, and for certificate for same, 50 cents (Pol. Code, 416; Gen. Laws, Title 84, Stat. 1895, p. 268; Laws of 1905, chap. 467).

**8. Corporate Indebtedness.** — Cannot exceed amount of subscribed capital stock (C. C., sec. 359, as amended by Laws of 1903, chap. 253; Laws of 1905, chap. 416, sec. 4).

**9. Commencing Business.** — Corporations may commence business as soon as the certificate of incorporation is issued by the Secretary of State. They must commence business within one year upon penalty of having their charter forfeited by proper action commenced by the State (C. C., sec. 358; see also Laws of 1901, chap. 147). If the corporation has property in other counties than that where its original articles are filed, it must within sixty days after such property is purchased, located, or held, file with the clerk of such counties copies of its articles of incorporation certified by the Secretary of State (C. C., sec. 299; Laws of 1905, chap. 416).

*People v. Company*, 45 Cal. 306.

**10. Organization Meeting.** — A preliminary organization is effected by the stockholders holding a meeting within the State within one month after incorporation (by proxy if desired) and proceeding to adopt by-laws. These must be adopted by a two-thirds vote of all the stock issued and outstanding. By-laws may, however, be adopted by the written assent of two-thirds of the stockholdings without a meeting (C. C., sec. 301; Laws of 1905, chap. 416). The right to repeal and amend by-laws is governed by the same provisions. The power to repeal and amend by-laws and adopt new by-laws may by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. All by-laws must be certified by a majority of the board of directors and the secretary of the corporation, and copied in a book kept in the office of the secretary of the corporation, to be known as the book of by-laws, subject to the inspection of the public during business hours each day (C. C., sec. 301; C. C., sec. 364; Laws of 1901, chap. 157, secs. 67, 68; Laws of 1905, chap. 416).

*Hall v. Crandall*, 29 Cal. 568.

**11. Meetings of Stockholders and Directors.** — Meetings of both stockholders and board of directors must be held at the corporation's office or principal place of business (C. C., sec. 319; Laws of 1905, chaps. 282, 584; as to use of proxy at stockholders' meetings, see Laws of 1905, chaps. 28, 416, secs. 7-9).

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors who shall be stockholders and a majority of whom shall be residents of the State. Unless a quorum is present no business performed or acted on is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board (C. C., secs. 290, 301, 305; Laws of 1901, chap. 145; Laws of 1905, chaps. 392, 416).

*b. Liabilities.* — Directors are jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers during their term of office (Cons., Art. XII. sec. 3). Non-dissenting directors are liable to the corporation and to the creditors to the full amount of the capital stock withdrawn as dividends when there are no surplus profits (C. C., sec. 309; Laws of 1905, chap. 416). They are also jointly and severally liable where they create debts beyond the subscribed capital stock (C. C., sec. 309). They are also liable for the withdrawal of capital stock or the increase or decrease thereof, except when made in accordance with the statute in such case made and provided (C. C., sec. 309). Finally, directors are made liable for making false reports relative to corporate matters (Laws of 1905, chap. 522). Directors in mining corporations are liable for failure to have the reports and accounts current made and posted as required by law (C. C., sec. 590).

*Fox v. Company*, 108 Cal. 478; 41 Pac. 328; *A. S. Mining Co. v. Company*, 78 Cal. 629; 21 Pac. 373; *Martin v. Zellerbach*, 38 Cal. 300; *E. W. & Mining Co. v. Pierce*, 90 Cal. 131; 27 Pac. 44; *Shattuck v. Company*, 58 Cal. 550; *Irvine v. McKeon*, 23 Cal. 472.

**13. Stockholders' Liabilities.** *a. Individual Liability.* — Every stockholder is individually liable for such proportion of the corporation's debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock owned by him bears to the whole of the subscribed capital stock of the corporation. The liability of each stockholder is determined by the amount of stock owned by him at the time the debt or liability was incurred, and such liability is not released by subsequent transfer of

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stock (Cons., Art. XII. sec. 8; C. C., sec. 322; Laws of 1905, chap. 339). Stockholders are also liable for the amount of their unpaid-stock subscriptions.

Harmon v. Page, 62 Cal. 448; Baines v. Babcock, 95 Cal. 581; 27 Pac. 674; Vermont Marble Co. v. Company, 135 Cal. 579; 67 Pac. 1057; Bank v. Company, 103 Cal. 594; 37 Pac. 499.

*b. Stock Assessments.* — Assessments are levied in the first instance by the board of directors after one-fourth of the capital stock has been subscribed. The amount of the assessment is limited except in the case hereafter referred to, so that no one assessment shall exceed ten per cent of the amount of the authorized capital stock. The exception is where the whole capital stock has not been paid up and the corporation is unable to meet its liabilities or to satisfy the claims of creditors. The assessment must be levied according to statute, and must be made payable not less than thirty nor more than sixty days from the time of making the order leaving the assessment. The day to be fixed for the sale of delinquent stock shall be not less than fifteen nor more than sixty days from the day the stock is declared delinquent. In addition to the penalty provided for forfeiture of stock for failure to pay assessments, a corporation may recover the amount of such instalment directly against the stockholder by proper action brought for that purpose (C. C., secs. 331-349).

Visalia, etc. Co. v. Hyde, 110 Cal. 632; 43 Pac. 10; U. S. Bank v. Leiter, 145 Cal. 696; 79 Pac. 441.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by the president and secretary (C. C., sec. 323). The corporation may provide in its by-laws for issuing certificates prior to full payment, but any certificate issued prior to full payment must show on its face what amount has been paid thereon. The par value of stock certificates may be any amount (C. C., secs. 290, 587; Laws of 1901, chap. 147; Laws of 1905, chaps. 339 and 391).

Williams v. Company (Cal.); 78 Pac. 28.

**15. Preferred Stock.** — There are no special provisions relating to the issuance of preferred stock.

**16. Payment of Capital Stock.** — Under the constitution no corporation can issue stock except for money paid, or labor done, or property actually received (Cons., Art. XII. sec. 11; C. C., sec. 359, as amended by Laws of 1903, chap. 253).

Ewing v. Company, 56 Cal. 649; Stein v. Howard, 65 Cal. 616; 4 Pac. 662; Martin v. Zellerbach, 38 Cal. 309; Jefferson v. Hewitt, 103 Cal. 624; 37 Pac. 638; Kellerman v. Maier, 116 Cal. 416; 48 Pac. 377; Garretson v. Company, (Cal.); 79 Pac. 838.

**17. Books.** — The book of by-laws and stock books must be kept at the principal office of the company within the State, and are subject to inspection thereof by any stockholder. The stock and transfer books are open to inspection of creditors as well as stockholders (C. C., secs. 304, 377-378, 588; and Cons., Art. XII. sec. 14).

**18. Office.** — The corporation must maintain an office within the State (Cons., Art. XII. sec. 14).

**19. Reports.** — No reports are required to be published. Directors in mining corporations are required to make monthly reports to the stockholders, verified by the president and secretary (C. C., sec. 588).

**20. Anti-Trust Statute.** — Corporations cannot combine or agree to any act to prevent any person from buying live-stock in the State, or having it for sale or selling it on commission (Session Laws of 1893, chap. 30).

**21. Statutory Grounds for Forfeiture of Charter.** — If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, or if after organization and commencement of business it loses or disposes of all of its property and for a period of two years fails to elect officers and transact in a regular way its business, its corporate powers shall cease, and the corporation may be dissolved by proper action brought by the State for that purpose (C. C., sec. 358; C. C., Pro., secs. 802-810; Laws of 1901, chap. 206). Charters may be forfeited by failure to pay the annual corporation tax as provided by laws of 1905, chap. 386.

*People v. Stanford*, 77 Cal. 360; 18 Pac. 85; *People v. Dashaway Ass'n*, 84 Cal. 114; 24 Pac. 277; *San Pedro v. R. R. Co.* 101 Cal. 333; 35 Pac. 993; *People v. Water Co.*, 97 Cal. 276; 32 Pac. 236; *L. H. Bank v. Spires*, 126 Cal. 541; 58 Pac. 1049.

**22. Amendments.** — The power of amendment in California is broad and is also somewhat complicated. The name of the corporation can be changed only by application to the Superior Court. The corporation must file in the office of the Secretary of State a certified copy of the decree of the court changing the name (Code of Civ. Pro., secs. 1276, 1277; Laws of 1905, chaps. 45, 103). Articles may be amended for any purpose except as stated below, by the majority vote of the directors and by the vote or written assent of stockholders representing two-thirds of the subscribed capital stock of the corporation, or the written assent of the majority of the members if there is no capital stock; a copy of the articles as amended, duly certified to be correct by the president and secretary of the board of directors, shall be filed in the office where the original articles are filed and a certified copy thereof duly certified by such county clerk, in the office of the Secretary of State. Amended articles, duly certified as aforesaid, must be filed in the office of the county clerk of every county in which said corporation has or holds property except only in the county in which the original amended articles of incorporation have been filed. Failure to so file subjects the corporation to the penalties and liabilities provided in sec. 299 of the Civil Code. If the assent of two-thirds of the stockholders to such amendment has not been obtained, a notice of the intention to make such amendment must be advertised for thirty days in some newspaper published in the locality in which the principal place of business of the corporation is located before the filing of the proposed amendment. The Code specifically provides that the foregoing shall not be construed to authorize any corporation to increase or diminish capital stock, change its name, extend its corporate existence, or increase or diminish the number of its directors without complying with other and special provisions of the Code applicable thereto (C. C., sec. 362, as amended by Laws of 1905, chap. 576). The capital stock cannot be diminished to an amount less than the indebtedness of the corporation. The publication may be done away with by the adoption of a resolution by the unanimous vote of the board of directors increasing the capital stock at a regular called meeting for the purpose when such resolution is approved by the written assent of the stockholders holding two-thirds of the subscribed or issued capital stock. The place of business may be changed, if desired, by amendment (C. C., sec. 321 a). If articles are filed in the wrong county in the first instance, the Code provides a means of remedying this. The number of directors may be changed by a majority vote of the stockholders, whereupon a certificate must be filed relative to such



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change, in the same manner as in the case of original articles (Laws of 1905, chap. 392. See C. C., secs. 359, 363; see also Laws of 1903, chaps. 216, 219, 253, 285).

Application of *La Société, etc.*, 123 Cal. 525; 56 Pac. 458.

**23. Annual License Tax.** — All domestic corporations must obtain a State license to transact business within the State. An annual license tax of \$10 must be paid by every domestic corporation between the first Monday in July and the first Monday in August of each year to the Secretary of State. The same provision is applicable to foreign corporations. Failure to pay this tax subjects the domestic corporations to forfeiture of their charter, and foreign corporations to the right to do business in the State. If the tax is not paid by the first Monday in October of each year, the Secretary of State is required to report such failure to the Governor, who is required to forthwith issue his proclamation declaring the charters of delinquent domestic corporations forfeited, and the right of foreign corporations to do business in the State forfeited unless payment of such license tax is made within sixty days from the date of proclamation, together with a penalty of \$5 for in addition thereto. The law provides that at the expiration of said sixty days from the date of such proclamation, charters of all domestic corporations who have not complied with the provisions of the Code and paid such tax shall forfeit the right to do business in the State (Laws of 1905, chap. 386).

**24. Extension of Corporate Existence.** — Only corporations formed for a period of less than fifty years have the power, prior to the expiration of the term of their corporate existence, to extend such term to a period not exceeding fifty years from their formation (C. C., sec. 401; Laws of 1905, chap. 418).

**25. Dissolution.** — The dissolution of a corporation is effected by decree of the Superior Court of the county where the principal place of business is situated, upon voluntary application signed by a majority of the board of directors (Code Civ. Pro., secs. 1227-1234; Laws of 1905, chaps. 348, 416, secs. 4, 418).

**26. Foreign Corporations.** — Foreign corporations must within forty days from the time it commences to do business within the State file in the office of the Secretary of State a designation of some person residing within the State upon whom service of process may be made. Unless such designation is made the right to maintain or defend actions in the courts is denied to the corporation. The corporation must also file in the office of the Secretary of State a certified copy of its articles of incorporation or of the statute or governmental act creating it, and a certified copy thereof duly certified by the Secretary of State of California must likewise be filed in the office of the county clerk of the county where its principal place of business is located and also where such corporation owns property. For filing such certified copy in the office of the Secretary of State the same fees must be paid as are paid by domestic corporations of like capitalization upon organization. Failure to comply with the law subjects the corporation to heavy penalties (Laws of 1905, chap. 471). Foreign corporations are also subject to the payment of the same annual license tax as domestic corporations. Stockholders in foreign corporations doing business in the State are liable to the same extent as stockholders in domestic corporations (Laws of 1905, chap. 386). The fee for filing notice of appointment of agent is \$5 (Laws of 1905, chap. 467). The right to cumulate votes in the election of directors is made applicable to foreign corporations (Laws of 1903, chap. 215).

*Thomas v. Company*, 65 Cal. 600; 4 Pac. 641; *Pinney v. Nelson*, 183 U. S. 144; 22 Sup. Ct. 52.

COLORADO.

(The references cited below are to Mills' Annotated Statutes, 1905 Edition, unless otherwise stated.)

**1. Character of the Law under which Business Corporations may incorporate.**—The Business Corporation Act of Colorado is found in Mills' Annotated Statutes of Colorado, secs. 472 *et seq.* Special acts are provided for the incorporation of railways, banks, trust companies, deposit, surety, title, guaranty, insurance, toll road, ditch, bridge and ferry, telegraph, telephone, gas and electric companies.

**2. Incorporators.**—Three or more. There are no residential requirements (Mills, sec. 473).

**3. Contents of the Certificate of Incorporation.**—The certificate must set forth:

*a. Name.*—The name must commence with the word "the" and end with the word "corporation," "company," "association," or "society," and must indicate the business to be carried on. Similarity of names is forbidden (Mills, secs. 472, 475).

*b. Purposes.*—The statute clearly contemplates that corporations may be organized for any number of purposes not covered by the special acts.

*c. Capital Stock.*—The amount of the capital stock. This may be any amount. In the case of a mining company the article should state whether the stock is non-assessable or assessable (Mills, sec. 581).

*d. Duration.*—Must not exceed twenty years.

*e. Number and Par Value of Shares.*—The par value of shares must not be less than \$1 nor more than \$100.

*f. Directors.*—The number of directors must not be less than three nor more than thirteen. In the case of mining companies and banks the number must not exceed nine (secs. 512, 585).

*g. Names of First Board of Directors.*—This board, under the statute, has control of the affairs of the company for the first year of its existence.

*h. Domiciliary Office.*—The name of the town and county in which the principal office of the company shall be kept.

*i. Place for the Transaction of Business.*—Name of the county or counties in which the principal business shall be carried on. When the corporation is to carry on part of its business without the State, the certificate must state that fact, and also state the name of the town and county in Colorado in which the principal office shall be kept, and also state the names of the counties in which the principal business of the corporation is to be carried on within the State.

*j. By-Laws.*—To directors may be delegated the right to make by-laws if so desired, otherwise the stockholders must adopt the by-laws.

*k. Directors' Meetings.*—If it is desired to hold directors' meetings without the State, this right should be reserved in the certificate (Mills, sec. 473).

*Schroers v. Fisk*, 10 Col. 599; 16 Pac. 285; *Duggan v. Company*, 11 Col. 113; 17 Pac. 105; *Humphreys v. Mooney*, 5 Col. 293; *People v. Cheeseman*, 7 Col. 376; 3 Pac. 716; *D. & S. Ry. Co. v. D. C. Ry. Co.*, 2 Col. 673; *G. R. B. Co. v. Rollins*, 13 Col. 4; 21 Pac. 897; *Jones v. Company*, 21 Col. 263; 40 Pac. 457.

**4. Statutory Powers.**—The main statutory powers are what are known as the common law powers belonging to all business corporations (Mills, sec. 476). Corporations have, however, the following extraordinary powers in

Colorado: To consolidate with another corporation when, by a vote of at least three-fourths of the stock of each company severally had, the proposition shall be approved. The method of consolidation is pointed out in detail in the statute (Mills, secs. 625, 628). The statute contains one express limitation upon the powers of corporations, which may be enumerated as follows: They are forbidden to use any of the corporate funds for the purchase of their own stock except such as may be forfeited for the non-payment of assessments thereon (Mills, sec. 485). Manufacturing and mining companies cannot encumber their plant or mines or machinery without the vote of a majority of the stockholders (3 Mills, 481). Cumulative voting for directors is permitted; also voting by proxy (Laws of 1895, pp. 150-152, sec. 1; Laws of 1891, p. 93, sec. 4; see also Laws of 1903, p. 158).

*Jones v. Hardware Co.*, 21 Col. 263; 40 Pac. 457; *Spangler v. Butterfield*, 6 Col. 356; *Carpenter v. People*, 8 Col. 116; 5 Pac. 828; *Mining Co. v. Bank*, 2 Col. 248; *City of Pueblo v. Company*, 28 Col. 524; 67 Pac. 162.

**5. Procuring the Charter.** — The certificate must be signed and acknowledged by each of the incorporators. In practice it is well to execute a sufficient number of original certificates so as to permit the filing of one original in every county where the business of the corporation is to be carried on, as well as in the office of the Secretary of State. As soon as the certificate has been filed in the office of the recorder of deeds in each of the counties in which the principal place of business shall be carried on, as well as in the office of the Secretary of State, the corporate existence commences (secs. 473-475). The Secretary of State issues a certificate of authority to transact business as a corporation within the State. The president and a majority of the directors, after the last instalment of stock is paid in, must make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the directors and must be recorded in the same offices where the certificate of incorporation is recorded (Mills, secs. 487, 491). There is no penalty by law for failure to file the certificate of full paid stock.

*Austin v. Berlin*, 13 Col. 198; 22 Pac. 433; *Cook v. Merritt*, 15 Col. 212; 25 Pac. 176; *Matthews v. Patterson*, 16 Col. 215; 26 Pac. 812; *F. M. & Co. v. MacLeod*, 8 Col. Ap. 190; 45 Pac. 282.

**6. Corporate Indebtedness.** — There is no statutory limitation upon the amount of indebtedness which a corporation may incur.

**7. Organization Fee.** — There must be paid to the Secretary of State \$20 for filing the certificate of incorporation of companies with a capitalization of not more than \$50,000, and for every thousand dollars in excess of \$50,000 an organization tax of 20 cents per thousand is exacted (Laws of 1901, chap. 52, sec. 1).

*Jones v. Company*, 21 Col. 263; 40 Pac. 457.

**8. Filing and Recording Fees.** — There are no fees due the Secretary of State for filing articles of incorporation other than payment of the organization tax. For certified copy of articles of incorporation, 15 cents per folio of one hundred words, and \$1 for seal. For issuing certificate of authority showing that all fees prescribed by law have been paid, \$5; for filing and recording impression of the corporate seal, \$2.50; for filing certificate of payment of stock, \$2.50 and upwards, according to capitalization; if capitalization exceeds \$50,000, the fee is five cents per \$1000 of stock in excess thereof.

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With regard to fees of county recorder, wherein articles of incorporation are required to be filed, the counties are graded for fee purposes. The filing fee there ranges from 10 cents to 25 cents. If the articles are recorded, the fee ranges from 50 cents to \$2 (Laws of 1901, pp. 116-121, secs. 1-10).

**9. Commencing Business.** — Corporations may begin business as soon as their certificates have been filed, State fees paid, and certificate of payment thereof issued (Laws of 1901, chap. 52, sec. 1).

**10. Organization Meeting.** — The incorporators should sign a written agreement fixing the time and place within the State for the organization of the corporation. The incorporators may be represented by proxy if desired. If the certificate of incorporation does not bestow upon directors the right to make by-laws, the stockholders should adopt by-laws themselves. Immediately after the adjournment of the stockholders' organization meeting (if any is held), the board of directors named in the certificate of incorporation should meet and elect the officers of the corporation, receive and act upon an offer to transfer property for stock, etc., and adopt by-laws. The statutory officers are a president, who must be chosen from among the directors, and such subordinate officers as the company may by its by-laws designate.

*Humphreys v. Mooney*, 5 Col. 283.

**11. Meetings of Stockholders and Directors.** — Meetings of the stockholders must be held at the office of the company within the State. Directors' meetings may be held without the State only by making provision therefor in the certificate of incorporation (Mills, secs. 481, 493).

*Humphreys v. Mooney*, 5 Col. 283; *Jones v. Pearl M. Co.*, 20 Col. 417; 38 Pac. 700; *Cook v. Hager*, 3 Col. 386; *Utlay v. Company*, 4 Col. 371.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must not be less than three nor more than thirteen directors, all of whom must be stockholders. In case of mining companies and banks not more than nine are permitted. There are no residential requirements (Mills, sec. 481; see also Mills, sec. 585; Laws of 1895, pp. 150-152, sec. 1).

*b. Liabilities.* — Assenting directors are jointly and severally liable for the declaration and payment of dividends which render it insolvent or which decrease the amount of its capital stock. The extent of the liability is for all debts of the corporation then existing and for all that shall thereafter be contracted while the capital remains so diminished (Mills, sec. 492). They are also liable for failure to file annual reports (Laws of 1901, 3 Mills, sec. 491 g). However, as the failure to file the annual report fixes directors and officers with the liability for debts as stated, and as this annual report must be filed whether the stock has been fully paid and certificate to that effect made or not, it would appear that the failure to make a certificate as to full payment of stock is in itself immaterial.

*Nix v. Miller*, 26 Col. 203; 57 Pac. 1034; *Austin v. Berlin*, 13 Col. 198; 22 Pac. 433; *Matthews v. Patterson*, 16 Col. 215; 26 Pac. 812; *Larsen v. James*, 1 Col. App. 313; 29 Pac. 183; *Gregory v. Bank*, 3 Col. 322; *Col. Fuel Co. v. Lenhart*, 6 Col. App. 511; 41 Pac. 634; *Cook v. Merritt*, 15 Col. 212; 25 Pac. 176.

**13. Stockholders' Liabilities.** — Stockholders are liable for corporate debts to the extent of their unpaid subscriptions to the corporate stock (Mills, sec. 486).

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by such officers as the by-laws shall prescribe.

The par value of stock certificates must not be less than \$1 nor more than \$100 (Mills, sec. 480).

**15. Preferred Stock.** — The issuance of preferred stock is not expressly authorized by statute.

**16. Payment of Capital Stock.** — The corporation may purchase mines, manufactories, and other property necessary for the corporate business, and issue stock to the amount of the value thereof in payment therefor. Stock so issued shall be declared full paid stock and not liable to any further assessments. Neither shall the stockholders be liable to any further payments therefor. The constitutional provision (Cons., Art. XV. sec. 9) is that no corporation shall issue stock or bonds except for labor done, service performed, or money or property actually received (Mills, sec. 618).

**17. Books.** — The directors are required to keep at the principal office or place of business within the State correct books of account. These books shall be open to the inspection of stockholders at any time. In addition to the foregoing a stock register must be kept containing the names and residences of the stockholders, the number of shares held by them, the time when they became or ceased to be stockholders, and the amount of stock actually paid in and what proportion has been paid in cash. This book is open to the inspection of stockholders and creditors during business hours (Mills, sec. 488; 3 Mills, 508; Laws of 1903, chap. 77).

**18. Office.** — The corporation must maintain an office within the State (Mills, sec. 473).

**19. Reports.** — Annually within sixty days from January 1st, reports must be filed with the Secretary of State, covering the names and residences of officers and directors, the amount of capital stock fixed, and the proportion paid in; a statement of the manner of the payment of capital stock, a statement that the company is or is not engaged actively in business within the State, and other information necessary to show the financial condition of the company. Also the amount of indebtedness of the company at the date of the filing of the report. (Mining, ditch, and power companies must include other statements.) In case of failure to file such report the officers and directors become liable for corporate indebtedness contracted during the preceding year, or while such default continues (3 Mills, 491 j). A report of particulars of financial condition must also be made to the State Board of Assessors, and filed before June 1st, under penalty of \$100 per day for default (Laws of 1902, pp. 71-73, sec. 63).

**20. Anti-Trust Statute.** — There is no anti-trust statute.

**21. Statutory Grounds for Forfeiture of Charter.** — Failure to pay license tax subjects the corporation to forfeiture of charter at the instance of the State (Session Laws of 1902, p. 74, or 3 Mills, sec. 3867).

**22. Amendments.** — Corporations may amend their articles of incorporation in any manner provided that thereby they do not so change such articles as to work a change in the object or purposes for which such corporation was originally organized. All proposed amendments must be voted upon by the stockholders either at their regular annual meeting or at a special meeting; provided the published notice of such annual meeting required by law and by the by-laws of the corporation shall have contained a notice of such proposed amendment giving the purport of the same, and that it would be presented and acted upon at such meeting, and provided further that if such amendment is to be voted upon at a special meeting the same shall be called by order of the board of directors, and that notice thereof shall have been given as

required by the by-laws of the corporation and as provided in section 347 of the General Statutes of Colorado. The act also provides that a meeting of the stockholders to vote upon the proposed amendment shall be called by the president or other head officer upon written request of the holders of one-third in amount of the subscribed capital stock. Upon such request the president must call together the board of directors and present such request to them, and thereupon it shall be the duty of the board of directors to call a special meeting of the stockholders for the purpose of considering such proposed amendment for a time not less than thirty nor more than sixty days thereafter, which meeting shall be called in the manner provided in section 347 of the General Statutes of Colorado, and shall be held at the place appointed by the said board and designated in said notice. If at such stockholders' meeting the amendment shall receive the vote of two-thirds of all the subscribed capital stock, it shall be deemed adopted, and a certificate setting forth the fact or facts, signed by the president or other head officer of such corporation, and verified by his affidavit and attested by the secretary thereof with the seal of the corporation thereunto affixed, shall be filed for record with the Secretary of State, and a like certificate shall be filed in the office of the recorder of each county wherein the original articles of incorporation were filed. Thereafter such amendment or amendments shall be in full force and effect to the same extent as if the same had been included in the original articles of incorporation (3 Mills, secs. 477 to 479 inclusive).

**23. Annual Franchise Tax.** — Where the capitalization is less than \$25,000, there is no annual franchise tax exacted. In case the capitalization is \$25,000 or more, the annual franchise tax is two cents per thousand for each thousand dollars (3 Mills, sec. 1865). This tax is payable to the Secretary of State (3 Mills, sec. 491 q).

**24. Extension of Corporate Existence.** — Stockholders owning at least ten per cent of the entire capital stock of the corporation have the right to call a special meeting of the stockholders to vote upon the question as to whether the corporate existence shall be extended beyond the limit prescribed in the original articles. Notice of such meeting must be given by publication for four successive weeks by mailing notice thereof to each stockholder at least thirty days prior to the time fixed for the meeting. A majority of the entire capital stock issued and outstanding must be represented thereat. If such majority votes in favor of renewal, the president and secretary shall under the seal of the company certify to that fact, and shall file one certificate in the office of the recorder of deeds in each county wherein the company may do business, and one in the office of the Secretary of State. Thereupon the corporate life of such corporation shall be renewed for another term of twenty years. The Secretary of State is entitled to charge the same fees as are provided by law for filing in his office new certificates of incorporation. (Laws of 1905, chap. 87).

*Pratt v. Company*, 1 Col. Dec. Supp., 171.

**25. Dissolution.** — If all debts are paid, a company may be dissolved by the vote of two-thirds of the outstanding stock at a meeting of the stockholders called for that purpose. A certificate of such dissolution must be filed and likewise published (3 Mills, sec. 619 a).

**26. Foreign Corporations.** — A foreign corporation desiring to do any business, institute or defend actions, or hold property within the State is required to file with the Secretary of State a copy of its charter, or of its certifi-

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cate of incorporation, duly certified and authenticated by the proper authority from the State from which the charter issues. It must also file a certificate, signed and acknowledged by the president and secretary, with the Secretary of State and in the office of the recorder of deeds of the county or counties in which it proposes to carry on its business within the State, designating the principal place wherein the business of said corporation is to be carried on in the State, and appointing an agent at this principal place of business upon whom process may be served. The preliminary fee for foreign corporations seeking to obtain a permit to do business within the State, is one-half more than for filing original certificates of domestic corporations. The annual license tax for foreign corporations, as found in sec. 3866, 3 Mills, is four cents per thousand dollars of stock (there being no exception in the case of capitalization less than \$25,000) or two and one-half cents per thousand shares if the par value of the stock is less than \$1 per share (Stat., secs 499, 500, 501; Laws of 1893, p. 88, amending sec. 499; Laws of 1902, p. 73, secs. 65, 66; Laws of 1903, chap. 76, secs. 3 and 5). Foreign corporations must also file annual reports. The filing fees for foreign corporations in the Secretary of State's office are as follows: Where capitalization is \$50,000 or under, \$30; where it exceeds that amount, the fee is 30 cents on each additional thousand dollars of capital stock. The same fees are payable on any increase of capital stock. For filing copies of law of foreign states, the fee is \$5; for filing certificate designating agent, \$5.

*Miller v. Williams*, 27 Col. 34; 59 Pac. 740; *Keghart v. People*, 28 Col. 73; 62 Pac. 946; *Iron Silver Mining Co. v. Cowie*, 31 Col. 450; 72 Pac. 1067.

## CONNECTICUT.

(The references cited below are to the Session Laws of 1903, chap. 194, unless otherwise stated.)

**1. Character of the Law under which Business Corporations may incorporate.** — The corporation laws of Connecticut, including the Corporation Act of 1901 (General Statutes, 1901, chap. 157), have been entirely revised. The provisions of the Act of 1901 have been repealed, and the revised law — Laws of 1903, chap. 194 — has been substituted therefor. Special acts are provided for the incorporation of banking, trust, building and loan, insurance, surety, railway, street railway, telephone, telegraph, gas, electric light, and water companies. Corporations may, however, be incorporated for the purpose of transacting any of the said lines of business just enumerated in any other State or foreign country if not prohibited by the laws of such State or foreign country (sec. 62).

**2. Incorporators.** — Three or more. There are no residential requirements (sec. 62).

**3. Contents of the Certificate of Incorporation.** — The certificate must set forth:

a. *Name*, which must be such as to distinguish it from any other corporation chartered by or organized under the laws of the State, and from any corporation engaged in the same business or promoting or carrying out the same purposes within the State. The name must begin with "the" and end with the word "corporation," "company," or "incorporated" (secs. 2, 63).

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*b. Domiciliary Office.* — The name of the town in the State in which the corporation is to be located (sec. 63).

*c. Nature of the Business to be transacted or the Purposes to be promoted or carried out.* — The statute clearly contemplates that corporations may be organized for any number of purposes not covered by the special acts (sec. 63).

*d. Capital Stock.* — The amount of the total authorized capital stock, which shall not be less than \$2,000; also the number of shares into which the same is divided, which shall not be less than \$25. If there be more than one class of stock, a description of the general classes with the terms upon which they are respectively created (sec. 63).

*e. Commencing Business.* — Amount of capital stock with which the corporation shall begin business, which shall not be less than \$1,000 (sec. 63).

*f. Duration.* — The period, if any, limited for the duration of the corporation. The charter may be perpetual if desired (sec. 63).

*g. Regulation of Internal Affairs.* — There may also be inserted any lawful provisions which the incorporators may choose to insert for the regulation of the business of the corporation, or for defining or limiting the powers of the corporation, its officers, directors, or any class of stockholders (sec. 64).

**4. Statutory Powers.** — In addition to the statutory enumeration of the powers of corporations (Laws of 1903, chap. 194, sec. 3) corporations have the following extraordinary powers: To carry on their business in any State or Territory of the United States or in any foreign country. To share profits with employees. To acquire its own stock. To voluntarily dissolve itself. To mortgage real and personal estate, including its franchises, and issue promissory notes, bonds, or other evidences of indebtedness. To issue one or more classes of stock. To consolidate with another corporation engaged in the same or similar line of business. To enforce a lien upon corporate stock for all debts including assessments. To appoint an executive committee from the board of directors. To vote by proxy and to purchase and to hold the stock of other corporations. To cumulate votes in the election of directors by making provision therefor in the certificates of incorporation, (Laws of 1905, chap. 171; laws of 1903, chap. 194, secs. 3, 4, 9, 11, 21, 25, 27, 59, 75; Laws of 1905, chap. 166).

**5. Procuring the Charter.** — The certificate must be signed and sworn to by each of the incorporators and must be filed in the office of the Secretary of State, who shall examine the same, and if he finds that it conforms to the law, and that the organization tax has been paid, shall endorse thereon the word "approved," with his name and official title, and shall thereupon record such certificate in a book kept by him for that purpose (sec. 60). The law provides that the corporate existence shall begin upon the approval of such certificate by the Secretary of State (sec. 65). After such approval and until the directors shall be elected, the incorporators shall be given charge of the affairs of the corporation and may take such steps as are necessary or proper to obtain subscriptions to its stock (secs. 66 and 67).

*S. G. & P. Co. v. Scholfield*, 70 Conn. 500; 40 Atl. 182.

**6. Corporate Indebtedness.** — There is no limitation upon amount of corporate indebtedness.

**7. Organization Tax.** — Fifty cents on every thousand dollars of its capital stock up to \$5,000,000. Beyond that amount 10 cents upon every thousand dollars of excess. The minimum fee however is \$25 (sec. 61).

**8. Filing and Recording Fees.** — To the Secretary of State, \$1 for



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filing certificate of incorporation, and for recording the same \$1 for two pages or less, and for each additional page at the rate of 50 cents per page. For filing certificate of organization, \$1, and for recording the same \$1 for two pages or less, and for each additional page at the rate of 50 cents per page. For preparing certified copy of certificate of incorporation, 50 cents for each page, but in no case less than \$1.50. For filing annual reports, \$1. For preparing forms for certificates and reports of corporations, for recording the same and for copies of certificate, 50 cents for each page, but in no case less than \$1. For filing copy of charter or certificate of organization of foreign corporation, \$10; for filing statement required from such corporation \$5; for secretary's certificate with the State's seal impressed thereon, 50 cents. For filing appointment of Secretary of State as attorney for such corporation, \$1; for filing annual report and certified copy thereof, \$2.50; for recording certificate of incorporation in local county office, \$1.

**9. Commencing Business.** — Corporations cannot commence business until the amount of capital specified in the certificate of incorporation as the amount with which it will begin business, has been paid in, nor until its directors and officers have been duly elected, and its by-laws adopted, nor until a majority of its directors have caused to be filed with the Secretary of State a certificate of organization setting forth (1) The amount of each class of stock subscribed for. (2) The amount paid thereon in cash. (3) The amount paid thereon in property other than cash. (4) The amount paid on each share of stock which has not been paid in full. (5) The names and residences of each of the original subscribers with the number and class of shares subscribed for by each. (6) That the officers and directors of the corporation have been duly elected and its by-laws adopted. (7) The names and residences and post-office address of each of the officers and directors. (8) The location of its principal office in this state with the street number, if any, thereof, and the name of the agent or person in charge thereof upon whom process against the corporation may be served (Laws of 1905, chap. 267). Unless a certificate of organization is filed within two years after the filing of the certificate of incorporation, such certificate of incorporation shall be void. The Secretary of State must approve the certificate of organization before filing (sec. 69, Laws of 1905, chap. 267). No corporation can commence business until a copy of the certificate of incorporation, duly certified by the Secretary of State, shall have been duly filed and recorded in the office of the town clerk of the town where the corporation is to be located (sec. 60). (As to preliminaries necessary to be observed to secure permit to sell stock of oil and mining companies, see Laws of 1903, chap. 196).

**10. Organization Meeting.** — A majority of the incorporators may call the organization meeting at such time and place as may be designated by a notice published twice at least seven days before the time designated in a newspaper in the State having circulation in the town in which the corporation is located, and such notice may be waived by a writing signed by all the subscribers to the stock, and a majority of the incorporators specifying the time and place for such meeting. When the meeting is held, the subscribers for the stock, who may be present in person or be represented by proxy, must choose a temporary clerk, and proceed to the election by ballot of three or more directors, who are subscribers to the capital stock, and shall adopt by-laws for the regulation of the affairs of the corporation. Immediately upon the adjournment of the organization meeting of the incorporators, the directors should meet and organize by choosing from among their number a presi-

dent and shall appoint a treasurer and secretary, and such other officers as the by-laws shall prescribe. The same person may fill the offices of president and treasurer or of secretary and treasurer (secs. 67-71 inclusive).

11. **Meetings of Stockholders and Directors.** — Meetings of stockholders must be held at the office of the company within the State. Directors' meetings may be held without the State by making provision therefor in the by-laws or by the consent of all the directors. Cumulative voting is permitted if provision is made therefor in the certificate of incorporation (secs. 3, 22; Laws of 1905, chap. 171).

*McCall v. Company*, 6 Conn. 428.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors, who must be stockholders. There are no residential requirements. They may be divided into classes if desired (secs. 10, 68). The board of directors may appoint an executive committee if they see fit (sec. 10). May adopt by-laws subject to those adopted by the stockholders.

*b. Liabilities.* — Every director voting for a dividend or other distribution of assets, except from the net profits or actual surplus of the corporation, is liable to a fine of not more than \$500. If such payment or distribution leaves the company insolvent, the directors so voting shall be jointly and severally liable to the amount so paid or distributed to any creditors existing at the date of such voting which shall have obtained judgment against such corporation and on which execution shall have been returned unsatisfied. Where the directors concur in a fraudulent overvaluation of property taken in exchange for stock of the corporation, they are jointly and severally liable to the corporation for the amount of the difference between the actual value of any property so accepted in payment at the time of such indebtedness and the amount for which it is received in payment (secs. 5, 12).

*Davenport v. Lines*, 72 Conn. 118; 44 Atl. 17.

13. **Stockholders' Liabilities.** — Stockholders, whether original subscribers or not, are liable for any balance due on the stock held by them. After the par value of their stock has been paid they are not liable for any further assessments. They are liable for causing insolvency by illegally reducing stock (secs. 6, 16).

14. **Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him under the seal of the corporation signed by the president or vice-president and by the secretary or assistant secretary or treasurer or assistant treasurer. The par value of stock certificates must not be less than \$25 (secs. 15, 17, 63).

15. **Preferred Stock.** — Special authority to issue preferred stock is given by statute if provision is made therefor in the certificate of incorporation. The terms upon which such preferred stock is issued must be stated in the certificate of incorporation (sec. 63; see also sec. 25).

16. **Payment of Capital Stock.** — Stock may be paid for either in cash or in property. If not paid for in cash, a majority of the directors shall make and sign upon the corporate records a statement showing the property received in payment for stock and that it has an actual value equal to the amount for which it was so received. The judgment of the directors as to the value of the property upon this subject is made final. But the directors concurring in the judgment of such valuation, in the case of fraud in the overvaluation of such property, are jointly and severally liable to the corporation for the differ-

ence between the actual value of such property so accepted in payment and the amount for which it is received in payment (sec. 12).

17. **Books.** — The stock book or duplicate thereof, containing the names and addresses of the stockholders and the number of shares held by them, shall at all times during the usual hours of business be open to the examination of every stockholder at its principal office and place of business in the State. If a creditor makes an affidavit that he is a creditor of the corporation, the person in charge of the stock books is obliged to furnish him information as to the number of shares held by such stockholder in any corporation (secs. 18, 39).

*Heminway v. Heminway*, 58 Conn. 443; 19 Atl. 766.

18. **Office.** — The corporation must maintain an office within the State (sec. 63).

19. **Reports.** — The president and treasurer must annually, on or before the 15th day of February or August, make, sign, swear to, and file in the office of the Secretary of State a certificate setting forth as of the first day of January or July immediately preceding: the name, residence, and post-office address of all the officers and directors; amount of outstanding capital stock which has not been paid for in full, with the amount due thereon; location of the principal office within the State, with the street number if there be any, and the name of the person in charge thereof upon whom process against the corporation may be served. A certified copy of said certificate must be recorded in the office of the town clerk of the town in which said corporation is located (sec. 37). Every corporation may at any meeting duly held for that purpose empower its directors to issue shares of its unissued authorized capital stock. At the time of the filing of its next annual report, after the issue of any such shares, a majority of the directors shall make and file a certificate setting forth the facts relating to such issue similar to the facts relative to the original issue of stock required to be set forth under the certificate of organization (sec. 71).

20. **Anti-Trust Statute.** — There is no anti-trust affidavit in force in Connecticut.

21. **Statutory Grounds for Forfeiture of Charter.** — The grounds for proceedings in the nature of *quo warranto* against corporations are to be found in the Statutes of Connecticut 1887, secs. 1296-1302 inclusive. Unless the certificate of organization is filed within two years after the filing of the certificate of incorporation, it is void (Laws of 1905, chap. 267).

*Pearce v. Olney*, 20 Conn. 544; *Hart v. Company*, 40 Conn. 524.

22. **Amendments.** — Articles may be amended before commencing business in any respect desired, provided that the subject matter of such changes have been lawfully inserted in the original certificate of incorporation. No change, alteration, or amendment shall be valid unless approved in writing by all of the subscribers to the capital stock of such corporation, nor unless a certificate setting forth such amendments, changes, or alterations and stating the same has been duly approved by the subscribers, shall be made, acknowledged, and filed by all of the incorporators both in the office of the Secretary of State and in the office of the town clerk of the town where the corporation is to be located (sec. 73).

Every corporation may change its name, nature of its business, and its location; may increase or reduce the amount of its authorized capital stock; may create one or more classes of stock; may make such other amendments in its

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certificate of incorporation as may be desired, provided that the subject matter thereof could have been lawfully inserted in the original certificate of incorporation. No such amendments shall be valid unless approved by the vote of two-thirds of the outstanding capital stock of each class at a meeting of the stockholders duly called to consider such amendment, nor unless a certificate setting forth such amendments and stating the same have been duly adopted by the stockholders, shall be made and filed with the Secretary of State by a majority of the directors (sec. 74).

*N. H. & D. Ry. Co. v. Chapman*, 38 Conn. 56.

**23. Annual Franchise Tax.** — There is no annual franchise tax (sec. 61).

**24. Extension of Corporate Existence.** — There is no provision for extension of corporate existence.

**25. Dissolution.** — The franchise may be surrendered at any time before any part of subscriptions are paid and business begun. Thereafter voluntary dissolution may be accomplished by preliminary vote of the directors followed by the affirmative vote of three-fourths in interest of each class of stock issued and outstanding. Minority stockholders owning one-tenth of the capital stock may petition the court for dissolution (secs. 26–36 inclusive, 72; Laws of 1905, chap. 121).

**26. Foreign Corporations.** — Before a foreign corporation can transact business in the State it must file in the office of the Secretary of State a certified copy of its charter or certificate of incorporation, together with a statement signed and sworn to by the president, treasurer, and a majority of its directors, showing the amount of its authorized capital stock, the amount paid thereon, if any, and if any part of such payment has been made otherwise than in cash, said statement shall state the particulars thereof; and must also appoint in writing the Secretary of State to be its attorney upon whom process may be served. Foreign corporations are required to file annual reports similar to those required of domestic corporations. The fee for filing certified copy of the charter is \$10, and a further fee of \$5 is charged for filing the statement required by law (secs. 80 to 88 inclusive). For filing appointment of Secretary of State as attorney, \$1. Charge for filing annual report and making certified copy thereof for purpose of filing the same with the town clerk, \$2.50.

*Farmers' Loan & Trust Co. v. Smith*, 74 Conn. 625; 51 Atl. 609.

## DELAWARE.

(The references cited below are to the Legislative Session Laws of 1903, chap. 394, unless otherwise stated.)

**1. Character of the Law under which Business Corporations may be incorporated.** — The Business Corporation Act of Delaware is to be found in the Revision Act of 1899, and in its amended form in the Session Laws of 1903. Under it parties may incorporate for any lawful business except banking. Special provisions are to be found for incorporating railway companies for the purpose of operating railways within the State.

**2. Incorporators.** — There must be at least three incorporators. There are no residential requirements (sec. 1).

**3. Contents of the Certificate of Incorporation (sec. 5).** — The certificate of incorporation must set forth: . . .

*a. Name.* — The name of the corporation must contain one of the words "association," "company," "corporation," "club," "incorporated," "society," "union," or "syndicate." No name can be employed which does not serve to distinguish it from that of any other corporation engaged in the same business or promoting or carrying on the same objects or purposes within the State.

*b. Domiciliary Office.* — The name of the city, county, or place within the county in which the principal office or place of business is to be located within the State.

*c. Purposes.* — The nature of the business, objects, or purposes proposed to be transacted, promoted, or carried on. The statute clearly contemplates that corporations may be organized for more than one purpose not covered by the special acts. Banking is the only purpose forbidden to corporations organized under the General Act.

*d. Capital Stock.* — The amount of capital which shall not be less than \$2,000, the number of shares into which the same is divided, and the par value of each share, which may be any amount, the amount of capital stock with which it will commence business, which cannot be less than \$1,000. If the corporation is to have more than one class of stock, a description of each class must be given, with the terms on which the respective classes of stock are created.

*e. Incorporators.* — The name and place of residence of each of the original subscribers to the capital stock, who are in practice the incorporators of the company.

*f. Duration.* — The corporation may have perpetual existence. If not, the time when the existence is to commence and the time when it is to cease must be stated.

*g. Exemption of Stockholders from Liability for Corporate Debts.* — The certificate must state whether the private property of the corporation shall be subject to the payment of corporate debts, and if so to what extent.

*h. Regulation of the Internal Affairs of the Corporation.* — The certificate may contain any provision desired for the regulation of the business and the conduct of the affairs of the corporation, the directors and stockholders, or any classes of stockholders permitted by law (secs. 5, 12, 29, 34).

**4. Statutory Powers.** — In addition to the common law powers which are enumerated in the statute, Delaware corporations have the following additional powers: To guaranty, purchase, hold, assign, transfer, mortgage, pledge, or otherwise dispose of stock and bonds of other corporations, and to exercise in the case of stock the right to vote thereon. Corporations also have power to acquire and hold their own shares, but not to vote thereon. To conduct business in any State, Territory, or colony of the United States or in any foreign country. To issue stock for property or services, and to forfeit stock for non-payment of assessments; to have one or more offices out of the State, and to hold, purchase, mortgage, convey real and personal property out of the State, provided such powers are included within the objects set forth in the certificate of incorporation. To classify directors. The corporation also has express power to create preferred stock, if desired, provided this power is set forth in the articles of incorporation. The consolidation of corporations carrying on any kind of business is expressly permitted. Also to authorize voting by proxy, to forfeit stock for non-payment of assessments, and to cumulate votes in the election of directors (secs. 2, 9, 13, 14, 17, 19, 22, 29, 59-66, 135; see also Laws of 1905, chap. 155).

*State ex rel. White v. Hancock*, 2 Pen. 252; 45 Atl. 851.

**5. Procuring the Charter.** — The certificate of incorporation must be signed, sealed, and acknowledged by each of the original subscribers to the capital stock. The original certificate of incorporation is then filed in the office of the Secretary of State and a certified copy thereof recorded in the office of the recorder of deeds in the county in which the principal office as stated in the certificate of incorporation is located. When these acts have been completed and the organization tax paid to the Secretary of State, the corporate existence begins (secs. 5, 6, 7, 11). Collateral inquiry into legality of corporate existence is forbidden (sec. 68).

**6. Corporate Indebtedness.** — There is no limit upon the amount of indebtedness which a corporation may incur. Bondholders may be given the right to vote (sec. 29).

**7. Organization Tax.** — The organization tax is 15 cents for each thousand dollars of the total authorized capital stock. Said tax, however, never to be less than \$20 (sec. 129).

**8. Filing and Recording Fees.** — To the Secretary of State for filing and indexing certificate of incorporation, \$2; for certified copy of the certificate of incorporation to be filed in the office of the recorder of deeds, about \$4.50. Fee to the recorder of deeds for recording certified copy of the certificate of incorporation averages about \$4.50.

**9. Commencing Business.** — At least \$1,000 of the capital stock must be subscribed for before the corporation can begin business. If the corporate business is not begun in good faith within two years from the date of the incorporation, the franchise is subject to forfeiture (secs. 5, 67).

*P. W. & B. R. Co. v. Kent Co. R. R. Co.*, 5 Houst. 127.

**10. Organization Meeting.** — This may be held either within or without the State (sec. 30). The incorporators ordinarily sign a written agreement fixing the time and place within the State for the organization of the corporation. The incorporators may be represented by proxy if desired. Until the directors are elected the signers of the certificate of incorporation have by statute control of the affairs and of the organization of the corporation, and may take such steps as are proper to obtain the necessary subscriptions to stock. As soon as the meeting is organized by the election of a chairman and secretary, by-laws should be adopted. If the certificate of incorporation so provides, the directors to be elected at the organization meeting of the corporation may adopt by-laws. The incorporators should then proceed to the election of not less than three directors. The directors must own at least three shares of stock, and one must be a resident of the State. The by-laws may provide for the election of officers either by the stockholders or the directors. If by the stockholders, the election of the statutory officers should be had before the adjournment of the organization meeting. Immediately after the adjournment of the incorporators' meeting the directors named in the articles of incorporation should meet and elect the officers of the corporation. The statutory officers are a president, secretary, and treasurer. The president must be chosen from among the directors. The secretary and treasurer may or may not be the same person, and if the corporation have a vice-president, he may, if deemed advisable by the directors, hold the office of vice-president and secretary, or vice-president and treasurer, but not the office of vice-president, secretary, and treasurer. The directors may, if authorized by the by-laws, or by a resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, who shall have and

exercise all the powers of the board of directors in the management of the business affairs of the company. The secretary must be sworn (secs. 7-11).

11. **Meetings of Stockholders and Directors.** — The stockholders and directors may hold their meetings outside of the State if the by-laws so provide. It will be found more convenient to hold the organization meeting within the State (secs. 30, 32).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be a board of directors of not less than three in number, one of whom must be a resident of the State. The directors must hold at least three shares of stock. They may be divided into classes if desired. Power may be given the directors to adopt by-laws for the corporation, by inserting such a provision in the certificate of incorporation (secs. 9, 12, 30).

*b. Liabilities.* — Directors who knowingly cause to be published, or give out any written statement or report of the corporate business or condition that is false in any material respect, are jointly and severally liable for any loss or damage resulting therefrom. Non-dissenting directors are also liable for declaring dividends not earned, for refusing to make certificates of full payment of the capital stock upon written request of a creditor or stockholder, and for not producing list of stockholders at elections (secs. 23, 24, 28, 29, 35, 37, 49).

13. **Stockholders' Liabilities.** — Stockholders are only liable for their unpaid stock subscriptions (secs. 20, 28).

14. **Stock Certificate.** — Every stockholder is entitled to have a stock certificate issued to him signed by the president and treasurer. The par value of stock certificates may be any amount (secs. 15, 29).

15. **Preferred Stock.** — Corporations have the power to create two or more kinds of stock with such preferences and voting powers and with such restrictions or qualifications thereof as shall be stated or expressed in the certificate of incorporation. The preferred stock, however, must not exceed two-thirds of the actual capital paid in in cash or property. The preferred stock may, if desired, be made subject to redemption at not less than par at a fixed time and place to be fixed in the certificate of incorporation. Preferred stockholders shall be entitled to receive a fixed yearly dividend to be expressed in the certificate, not exceeding eight per cent payable quarterly, half yearly, or yearly. Such dividends may be made cumulative. Preferred stock cannot be created unless provided for in the original certificate or amended certificate of incorporation. Corporations are authorized to issue bonds and to confer upon the holders thereof the power to vote in respect to the corporate affairs and management of the company, to the same extent and in the same manner as stockholders, if so provided in the certificate of incorporation (secs. 13, 29).

16. **Payment of Capital Stock.** — The Delaware Constitution provides (Cons., Art. IX, sec. 3) that no corporation shall issue stock except for money paid, labor done, or personal property or real property or leases thereof, actually acquired by such corporation, and no labor or property shall be received in payment of stock at a greater price than the actual value at the time the said labor was done or property delivered or title acquired. By statute, however, it is provided that subscriptions to and purchase of the capital stock of any corporation organized under any law of this State may be paid for wholly or partly by cash, by labor done, by personal property, or by real property or leases thereof; and the stock so issued shall be declared and taken to be fully paid stock and not liable to any further call, nor shall the holder thereof be liable for any further payments thereon under the provisions of this Act. In the absence of actual fraud in the transaction the judgment of the directors

as to the value of such labor, property, real estate, and leases thereof shall be conclusive (Laws of 1905, chap. 155).

Every corporation may at any meeting increase its capital stock and the number of shares thereof until it shall reach the amount named in the original certificate (sec. 27). The president, with the secretary or treasurer, shall, upon the written request of any creditor or stockholder, make a certificate stating the amount of the instalments or calls paid in cash or by the purchase of property, and stating also the total amount of capital stock issued, which certificate shall be signed and sworn to by the president and secretary or treasurer, and shall within thirty days after the making thereof be filed in the office of the Secretary of State.

17. **Books.** — The original or duplicate stock ledger containing the names and addresses of the stockholders and the number of shares held by them respectively must be kept at the principal office within the State. These are open to the inspection of stockholders. The general books of account need not be kept within the State (sec. 29).

18. **Office.** — The corporation must maintain a principal office or place of business in the State, and have an agent, a resident of the State, in charge thereof. A sign containing the name of the corporation must be displayed at a conspicuous place in said office (secs. 32, 33, 137).

19. **Reports.** — Business corporations must file with the Secretary of State on or before January 1st a report stating the date of election, principal office within the State, names of officers, amount of authorized capital stock and amount actually paid in, amount invested in manufacturing and mining within the State. This report may be made by the president, treasurer, or other corporate officer (Tax Law, secs. 2, 3).

20. **Anti-Trust Statute.** — There is none in force within the State.

21. **Statutory Grounds for Forfeiture of Charter.** — The statutory grounds for forfeiture of charter are failure, for two years after the corporation is created, to commence in good faith the business to be promoted or the objects or purposes for which it was organized. Also failure for two successive years to pay the State tax assessed against it, which it is required to pay under the law, renders the charter void (sec. 67; Tax Law, secs. 10, 11).

22. **Amendments.** — The incorporators, before the payment of any part of the authorized capital stock of the corporation, may file with the Secretary of State an amended certificate duly signed by all of the incorporators amending the original certificate of incorporation in whole or in part. A copy of such certificate, duly certified by the Secretary of State, must then be recorded in the office of the recorder of the county in which the original certificate of incorporation was recorded. Such amended certificate shall thereupon take the place of the original certificate of incorporation (sec. 25). Certificates of incorporation may be amended when and as desired either by addition to its corporate powers and purposes or diminution thereof, or by the substitution of other powers and purposes in whole or in part for those prescribed by its charter, or by increasing or decreasing its authorized capital stock, or by changing the number and par value of the shares of its capital stock, or by changing the corporate name in manner following, to wit:

The board of directors shall first adopt a resolution setting forth the amendment proposed, declaring its advisability, and calling a meeting of the stockholders for consideration thereof. The meeting shall be called and held upon notice as provided for by the corporation's charter or by-laws. At such meeting a vote of the stockholders in person or by proxy shall be taken for and



against the proposed amendment, which vote shall be conducted by two judges appointed for that purpose either by the directors or by the said meeting. The judges are given plenary powers, and they are required to make out certificates in duplicate stating the number of shares of stock, voting for and against the amendment, and subscribing and delivering the same to the secretary of the corporation. If it shall appear by such certificates of the judges that the persons holding a majority of the stock of the corporation or of each class of stock, if there be more than one, have voted in favor of the amendment, thereupon the said corporation shall make under its corporate seal and the hands of its president and secretary a certificate accordingly, and the president shall duly execute and acknowledge the same with one of the judge's duplicate certificates attached, which shall be filed in the office of the Secretary of State, and a copy thereof certified by said Secretary of State shall be recorded in the office of the recorder of the county in which the original certificate of incorporation is recorded. No corporation, however, can decrease its capital stock without paying or adequately securing such of its debts as are not then fully secured (sec. 26). (See also secs. 27 and 28, as to increase and reduction of capital paid in).

**23. Annual Franchise Tax.** — The annual franchise tax on the amount of authorized capital stock actually paid in up to and including \$3,000,000, is one-twentieth of one per cent. When the latter exceeds \$3,000,000 and does not exceed \$5,000,000, one-fortieth of one per cent and a further sum of \$30 per annum is exacted for every million dollars or part thereof in excess of \$5,000,000. Manufacturing or mining corporations having at least fifty per cent of their capital stock issued and outstanding invested in manufacturing and mining within the State are exempt from the tax (Tax Law, sec. 4). The tax is due and payable on March 1st.

**24. Extension of Corporate Existence.** — Corporate existence may be extended by complying with the terms of the statute in such case made and provided (secs. 131-134).

**25. Dissolution.** — Before payment of any part of the capital stock or beginning business the incorporators may surrender their franchises by filing in the office of the Secretary of State a certificate verified by a majority of the incorporators to the effect that no part of the capital has been paid and that such business has not been begun. After the paying in of the capital stock a majority vote of the directors cast in favor of the dissolution of the corporation, coupled with the written consent of two-thirds in interest of the stockholders, affords the necessary basis for a dissolution of the corporation by consent. In addition to this, notice of the stockholders' meeting, called for the purpose of voting upon the question of dissolution, must be published for four successive weeks. The consent of the directors and officers must be certified by the president, secretary, and treasurer and filed with the Secretary of State, who issues his certificate that such consent has been filed, which certificate must be published for four consecutive weeks. If all the stockholders consent in writing, no meeting or notice is required (secs. 38-58).

*Com. Bank v. Lockwood's Adm'r*, 2 Harr. 8.

**26. Foreign Corporations.** — Before doing business within the State, foreign corporations are required to file with the Secretary of State a certified copy of their certificate of incorporation, the name of the authorized agent within the State, a sworn statement of assets and liabilities, and must pay to the Secretary of State a license fee of \$50. The corporation must also file with the clerk of the superior courts in each of the counties of Delaware

a certificate giving the name and residence of the agent authorized to accept service of process upon the corporation (Laws of 1903, chap. 395, secs. 1-10).

*Deringer's Adm'r v. Deringer's Adm'r*, 5 Houst. 416; *Standard Sewing Machine Co. v. Frame*, 2 Pen. 430; 48 Atl. 188; *Love v. P. & J. Co.*, 3 Pen. 577; 52 Atl. 542.

## DISTRICT OF COLUMBIA.

(The references are to the District of Columbia Code (1902), unless otherwise stated.)

### 1. Statutes under which Business Corporations may incorporate. —

The Business Corporation Act in force in the District of Columbia is to be found in the United States Statutes at Large, Vol. 31, pp. 12-84 *et seq.*, as amended by the Acts of January 31, 1902 (U. S. Stat. at L., Vol. 32, p. 2), and Act of June 30, 1902 (U. S. Stat. at L., Vol. 31, p. 529 *et seq.*). Under this act companies may be formed for the purpose of carrying on any business or enterprise which may be lawfully conducted by an individual, excepting banks, corporations formed to buy, sell, or deal in real property, railways, and such other enterprises or business as are provided for by special acts.

2. **Incorporators.** — There must be at least three incorporators. There are no residential requirements (sec. 605).

3. **Contents of the Certificate of Incorporation** (sec. 606). The certificate must set forth:

a. **Name.** — The act forbids the employment of a name already in use (sec. 604).

b. **Purposes.** — Object for which it is formed. The recorder of deeds only permits the insertion of one line of business in the certificate of incorporation. (See secs. 605, 612.)

c. **Duration.** — May be perpetual if desired.

d. **Capital Stock.** — Amount thereof and the number of shares. Both may be any amount desired.

e. **Trustees.** — Number of trustees, with the names of those who shall manage the corporation for the first year.

f. **Domiciliary Office.** — Location of the office in the district in which the operations of the company are to be carried on.

4. **Statutory Powers.** — In addition to a statutory enumeration of common law powers the act authorized voting by proxy; also forfeiture of stock for non-payment of assessments. The statute expressly forbids the purchase of stock in other corporations. Power to adopt by-laws is conferred upon the trustees (secs. 397, 607, 609, 612, 613).

*Scanlon v. Snow*, 2 D. C. Ap. Cases, 137.

5. **Procuring the Charter.** — The charter must be subscribed and acknowledged by each of the incorporators. (See *Dancy v. Clark et al.*, 33 Wash. Rep. 18.) It must then be filed in the office of the recorder of deeds for the district. The recorder of deeds is not permitted to file or record any certificate of organization of any corporation until it has been proved to his satisfaction, that all of the capital stock of said company has been subscribed for in good faith, and not less than ten per cent of the par value of the stock has been actually paid in cash, and the money derived therefrom is in the hands of the persons named as the board of trustees. The usual form of proof submitted is a certificate from some local bank that the money so paid in is on deposit with such bank. (See Act of Congress approved February 4, 1905; see also secs. 605, 607.)

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6. **Corporate Indebtedness.** — By implication the debts should not at any time exceed the amount of capital stock (sec. 634).

7. **Organization Tax.** — All corporations must pay to the recorder of deeds at the time of the filing of the certificate of incorporation 40 cents on each thousand dollars of the capital stock of the corporation as set forth in the certificate of incorporation; provided, however, that no fee shall be paid less than \$25 (Act of Congress approved February 4, 1905).

8. **Filing and Recording Fees.** — To the recorder of deeds, 50 cents for the first two hundred words in articles of incorporation; 15 cents for each hundred words in addition thereto; extra charge of 25 cents for each separate acknowledgment over one. For each certificate and seal, 25 cents.

9. **Commencing Business.** — Business may be commenced as soon as the articles are executed and filed as required by law. Before business can be transacted ten per cent of the capital stock must be paid in, either in money or property at its actual value (sec. 613). Within thirty days after the payment of the last instalment of the capital stock the president and a majority of the trustees must make, verify, and record in the office of the recorder of deeds a certificate stating the amount of capital fixed by the certificate and paid in (sec. 616).

10. **Organization Meeting.** — The organization meeting must be held within the district (this in the absence of any statute expressly authorizing such meeting to be held without the district).

11. **Meetings of Stockholders and Trustees.** — Stockholders' meetings must be held within the district. Owing to the provision that a majority of the trustees must be residents of the district, it is in practice almost a necessity to hold trustees' meetings in the district, where a majority of the body is required to be present. In practice, however, through the expedient of the appointment of an executive committee, composed of a majority of the board of trustees to whom is delegated all the powers of the full board in the transaction of the business outside of the District of Columbia, meetings of the trustees who are members of an executive committee can be held outside of the district. Notice of the holding of annual meetings for the election of trustees must be published in the district not less than thirty days previous thereto (secs. 608, 609).

12. **Trustees' Qualifications and Liabilities.** *a. Qualifications.* — There must be not less than three, nor more than fifteen trustees, who shall be stockholders, and a majority citizens of the district (secs. 608, 609, 612).

*b. Liabilities.* — Trustees are jointly and severally liable for making false certificates or reports, knowing the same to be false, which liability extends to all debts of the company contracted while acting as such trustees (secs. 618, 619, 631). Non-dissenting trustees are liable for loans of money upon the security of the company's own stock. They are also liable for illegal declaration of dividends (secs. 621-623).

13. **Stockholders' Liabilities.** — All stockholders are severally liable to the creditors of the corporation for the unpaid amount due on the shares of stock held by them respectively, for all debts and contracts made by the corporation until the whole amount of the capital stock of said company shall have been paid in, and a certificate thereof shall have been made and recorded. This certificate, signed and sworn to by a majority of the trustees and the president, must within thirty days after the payment of the last instalment of the capital stock be recorded in the office of the register of deeds of the district (secs. 615, 616).

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14. **Stock Certificates.** — Each stockholder is entitled to a certificate showing the number of shares owned by him, signed by such officers as the by-laws may prescribe.

15. **Preferred Stock.** — There is no express provision authorizing the issuance of preferred stock.

16. **Payment of Capital Stock.** — Stock may be paid for in money or property at its actual cash value (sec. 613).

17. **Books.** — The stock register must be kept within the District of Columbia. This is open to the inspection of stockholders and creditors (secs. 627, 628; see also secs. 631, 632).

18. **Office.** — Every corporation must maintain an office at all times within the district (sec. 606).

19. **Reports.** — Every corporation shall annually within twenty days from the 1st of January make a report, which must be published in a newspaper published in the district, stating the amount of capital and the proportion actually paid and the amount of existing debts, which report shall be signed by the president and a majority of the trustees and verified by the oath of the president or secretary of the company and filed in the office of the recorder of deeds of the district. The only penalty for failure to make this report is that any creditor of the corporation may, by petition for mandamus against the corporation, compel such publication to be made, and in such case the court shall require the corporation to pay all expenses of the proceeding including counsel fees. If any false report is made, all officers who have signed the same knowing it to be false are individually liable for all debts of the company contracted while they are stockholders or officers thereof (secs. 617, 618).

20. **Anti-Trust Statute.** — There is no anti-trust statute specially applicable to the District of Columbia.

21. **Statutory Grounds for Forfeiture of Charter.** — The act specifically provides for forfeiture of charters when the corporation has been guilty of misuse, abuse, or non-user of its corporate powers and franchises of such violation of law as would authorize and make proper the forfeiture thereof (sec. 786).

See *Gilbert v. Endowment Ass'n*, 10 D. C. Ap. 316.

22. **Amendments.** — Articles may be amended only for the purpose of increasing or decreasing the capital stock, or for the purpose of extending or changing its business. This may be accomplished in the following manner. Before the corporation shall be entitled to diminish the amount of its capital stock it must first diminish the amount of its debts and liabilities so that they shall not exceed such diminished amount of capital. To increase or diminish the capital stock or to extend or change the business, a majority of the trustees shall publish notice in a newspaper in the district at least three successive weeks and depositing a notice of such meeting in the post-office addressed to each stockholder at his usual place of residence at least three weeks to the date fixed upon for holding such meeting, specifying the object of the meeting and the time and place where such meeting shall be held. At this meeting stockholders must appear either in person or by proxy, representing not less than two-thirds of all of the shares of stock of the corporation. If after organization at said meeting and canvassing the votes it appears that the votes of two-thirds of the capital stock have been cast in favor of increasing or diminishing the amount of capital or extending or changing the business of the company,

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a certificate of the proceedings, showing compliance with the laws relative to amendments, the amount of capital paid in, the business to which it is extended or changed, the whole amount of its debts and liabilities, and the amount to which the capital shall be increased or reduced, shall be made out and signed and verified by the affidavit of the chairman of the meeting, and be countersigned by the secretary thereof. Such certificate when acknowledged by the chairman and filed in the office of the recorder of deeds of the district shall be sufficient to secure the amendment desired (secs. 633-639 inclusive).

23. **Extension of Corporate Existence.** — There is no provision for the extension of corporate existence except by reincorporating under the general statute (see secs. 766, 767).

24. **Dissolution.** — Corporations may be dissolved on application to the court having jurisdiction, for cause shown (secs. 769-789).

*Morrow v. Edwards*, 9 Mackey, 475.

25. **Annual Franchise Tax.** — There is no annual franchise tax.

26. **Foreign Corporations.** — Foreign corporations may obtain a permit to do business in the district if they desire to do so. They are, further, required to publish in at least two daily newspapers published in the district semi-annually during the months of March and September of each year, a full statement under oath, showing their capital stock and the amount paid in, the assets and liabilities, debts, deposits, dividends, dues as well as other current expenses during six months ending January and July 1st preceding under penalty of revocation of license or permit to do business in the district.

*Eastern Trust & Banking Co. v. Willis*, 6 D. C. Ap. 375.

## FLORIDA.

(The references cited below are to the Revised Statutes, 1892, unless otherwise stated.)

1. **Statute under which Business Corporations may incorporate.** — The Business Corporation Act of Florida is found in the Revised Statutes, 1892, secs. 2122-2158 inclusive and acts amendatory thereof. Special provisions are made for banking, building, and loan, insurance, surety, railway, canal, and telegraph companies.

2. **Incorporators.** — Three or more persons. There are no residential requirements (Laws of 1901, chap. 4895).

*Brown v. Company*, 19 Fla. 472.

3. **Contents of the Charter.** — The charter must set forth :

a. *Name.* — Similarity of names is forbidden.

b. *Domiciliary Office.* — The place or places of business must be set forth.

c. *Purposes.* — The general nature of the business or businesses to be transacted. The statute clearly contemplates that corporations may be created for more than one purpose, provided none of the purposes set forth are covered by special acts.

d. *Capital Stock.* — The amount of the capital stock authorized, the number and par value of the shares into which it is divided, and the terms and conditions upon which it is to be paid in must be set forth. The par value of the shares must not be less than ten dollars. The capitalization may be any

amount. If it is desired to pay in the capital stock in anything but money, this fact must be stated in the charter. This statement should include a provision either that the whole capital stock or some portion thereof shall be payable in property, labor, or services at a just valuation, to be fixed by the incorporators or by the directors at a meeting called for that purpose (Laws of 1901, chap. 4896).

*e. Corporate Existence.* — The charter may be perpetual if desired.

*f. Corporate Officers.* — The charter must designate the officers by whom the business is to be conducted, the times at which they shall be elected, and the names of the officers who are to conduct the business until those elected at the first election shall have qualified. The directors must all be stockholders. The statutory officers are a president and treasurer or cashier and such other officers as the by-laws may designate.

*g. Corporate Indebtedness.* — The highest amount of indebtedness to which the corporation can at any time subject itself must be set forth.

*h. Incorporators.* — The names and residences of the incorporators must be stated. The subscribing incorporators must also state the amount of stock subscribed for by each. Such amount shall be not less than ten per cent of the authorized capital stock (sec. 2123 as amended by Laws of 1901, chap. 4895).

**4. Statutory Powers.** — Florida statutes enumerate fully the common law powers of corporations. The only additional powers conferred by statute are the right to vote by proxy and to forfeit stock for non-payment of assessments. Also to mortgage properties. The power to adopt by-laws may be delegated in the charter to the directors if desired (secs. 2121, 2129, 2137, 2146; Laws of 1903, chap. 198).

**5. Procuring the Charter.** — The charter must be subscribed and acknowledged by each of the incorporators. Then the proposed charter, together with notice of the intention to apply to the governor for letters patent thereon, must be published for four weeks, once each week, in some newspaper published in the county where the principal place of business is to be located. This notice must be signed with the names of at least three of the incorporators, and the proposed charter must be filed in the Secretary of State's office during the four weeks of publication. Then the proposed charter, accompanied by proof of publication of notice, must be submitted to the governor, who, if he finds it to be in proper form, and for objects authorized by law, and that the formalities just referred to have been observed, will issue letters patent to the corporation. The Secretary of State will then annex to the letters patent a certified copy of the charter, retaining the original on file and recording it. The organization tax must be paid to the Secretary of State, who issues a certified copy of the charter. Corporate existence commences from the time the certified copy of the charter is issued by the Secretary of State. The statute specifically provides that letters patent, or a certified copy thereof, shall be conclusive evidence as to the existence of the corporation in all actions and proceedings where the question of its existence is only collaterally involved, and *prima facie* evidence in all other actions and proceedings (secs. 2124-2126, 2159).

**6. Corporate Indebtedness.** — There is no statutory limitation upon the amount of corporate indebtedness. (See Laws of 1903, chap. 198).

**7. Organization Tax.** — Two dollars upon each thousand dollars of the capital stock, provided no fee shall be less than \$5 or more than \$250 (sec. 2125 as amended by Laws of 1901, chap. 4895).

8. **Filing and Recording Fees.** — To the Secretary of State, in addition to the payment of the organization tax, there must be paid a filing fee of \$1. The charge for making a certified copy of the charter is 10 cents per hundred words for copying. The combined fee for filing and making certified copy and recording is about \$3.50. For publication, the charge is usually about \$10. For recording certificate of incorporation in the office of the clerk of the circuit court in the county where the corporation is to do business, together with the affidavit of the treasurer as to the amount of capital stock paid in, the fee is 10 cents per hundred words.

9. **Commencing Business.** — Before commencing business letters patent together with a certified copy of the charter must be recorded in the office of the clerk of the circuit court of the county where the principal place of business is located. There must also be filed with the Secretary of State and with said clerk of the circuit court duplicate affidavits by the treasurer of the corporation that ten per cent of the capital stock has been subscribed and paid. The organization tax must likewise be paid (sec. 2127).

10. **Organization Meeting.** — Must be held within the State (sec. 2141).

11. **Meetings of Stockholders and Directors.** — Stockholders must hold their meetings within the State. The directors may hold their meetings without the State if the by-laws so provide (secs. 2137, 2141).

*Duke v. Taylor*, 37 Fla. 64; 19 So. 172.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — The number of directors is not limited by law. They must all be stockholders. There are no residential requirements (secs. 2121, 2138).

*b. Liabilities.* — Directors participating in the direction of illegal dividends are jointly and severally liable for the debts of the corporation then existing to the extent of the dividend declared, unless they at the time object to the declaration of the dividend in writing (sec. 2163).

13. **Stockholders' Liabilities.** — Stockholders are liable to the extent of their unpaid stock subscriptions (sec. 2152; see also sec. 2127).

*Gibbs v. Davis*, 27 Fla. 531; 8 So. 633.

14. **Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by such officers as the by-laws may designate for that purpose. The par value of stock certificates may be any amount not less than \$10 (Laws of 1901, chap. 4396).

15. **Preferred Stock.** — There is no statutory provision expressly authorizing the issuance of preferred stock.

16. **Payment of Capital Stock.** — Unless otherwise provided in the charter, stock subscriptions must be paid in cash. Incorporators may however provide in the charter that the capital stock, either in whole or in part, shall be payable in property, labor, or services at a valuation to be fixed in the charter. The charter must also set forth the general description of the property to be taken in exchange for stock (sec. 2128 as amended by Laws of 1901, chap. 4396).

17. **Books.** — The secretary or other officer who by the by-laws is made the custodian of its books, is required to keep the same in his possession at all times during business hours, and have the same ready to be inspected by any officer, director, or committee appointed by the stockholders representing one-tenth of all the subscribed stock. The treasurer or cashier is required to keep a stock book containing a list of the stockholders with the number of

shares owned by each, which is subject to inspection by the stockholder upon written application (secs. 2133, 2147).

18. **Office.** — Every corporation must have a place of business within the State, and the custodian of its books and papers must reside within the State (sec. 2133; see also sec. 2123 as amended by Laws of 1901, chap. 4895).

19. **Reports.** — The corporation shall annually make a report to the State comptroller containing the name and residence of each stockholder, with the number of shares and the par and cash market value of such shares, the whole amount of capital stock, the amount actually paid in, the real estate subject to assessment of taxes, and the personal estate. A statement of the amount of capital stock subscribed and the amount actually paid in and of the indebtedness of the corporation shall be filed once every six months in the office of the State comptroller (secs. 2136, 2134).

20. **Anti-Trust Statute.** — Trusts to control meats, cattle, or edible animals are prohibited (Laws of 1897, chap. 4534).

21. **Statutory Grounds for Forfeiture of Charter.** — Diversion by a corporation of its funds or property to objects other than those named in the charter or to payment of dividends, leaving insufficient funds to meet outstanding liabilities, work a forfeiture of the charter (sec. 2162).

22. **Amendments.** — To change the name of a corporation a resolution to that effect must be passed by a majority vote of the stockholders at a meeting called for that purpose, and a certificate setting forth such resolution under the corporate seal (attested by the secretary) must be filed in the office of the Secretary of State. Thereupon letters patent shall issue, reciting the change in name, which must be recorded in the Secretary of State's office and in the office of the clerk of the circuit court where the original charter is recorded.

With respect to increasing or reducing the capital stock, the statute reads that any corporation desiring to alter or amend its charter shall do so in a certain prescribed manner as set forth in the statute. To increase the capital stock, notice of the meeting of stockholders called for that purpose must be published once a week for four consecutive weeks prior thereto in one newspaper published in the county. In addition to this the usual notice for stockholders' meetings provided for in the by-laws must be served upon or mailed to the stockholders. If at such meeting two-thirds of all the stockholders vote to increase the capital stock, the president within thirty days thereafter must make a return to the Secretary of State under oath of the amount of such increase and the terms on which said capital stock is issued, and from the time the said return is filed the increase of stock shall be authorized, and when issued shall become a part of the capital. At the same time the capitalization tax must be paid upon the amount of increased capital stock. To reduce the capital stock or alter or change the par value of the shares thereof requires the unanimous vote of all the stockholders cast at a meeting called in the same manner as is above referred to in the case of the increase of the capital stock. In order to legalize the reduction of the capital stock, the president must make within thirty days thereafter under oath his return to the Secretary of State of the amount of such decrease, and upon his affidavit must be endorsed a certificate of the State comptroller that in his judgment the ability of the corporation to meet its outstanding liabilities and debts will not be impaired thereby.

To amend the charter in other respects a meeting must be called in the manner set forth above with reference to increasing or reducing the capitalization. At this meeting the proposed amendment must receive a vote of three-fourths



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of the outstanding capital stock. If the proposed amendment is adopted, the corporation must then give four weeks' notice, once each week, of intention to apply to the governor therefor, in some newspaper published in the county wherein the principal place of business is located, setting forth the desired alteration or amendment. The corporation must then prepare a certificate which shall be filed in the Secretary of State's office during the time of publication, and afterwards, together with the proof of publication of notice. These are all submitted to the governor, who, if the same are found in proper form and legally adopted, if the proposed amendment will be beneficial and lawful and of interest to the community and in accord with the purposes of the charter, will approve the same, and thereupon letters patent shall issue reciting the amendment, and the same shall then be recorded in the office of the Secretary of State and in the office of the clerk of the circuit court where the original charter was recorded (secs. 2148, 2149, 2150, 2151).

23. **Annual License Tax.** — There is no annual license tax.

24. **Extension of Corporate Existence.** — The statute makes no specific provision for extension of corporate existence. (See, however, sec. 2150.)

25. **Dissolution.** — A majority in interest of the stockholders may petition the circuit court for the dissolution of the corporation, and the court after publication for a reasonable period may hear the matter and may decree a dissolution (R. S., sec. 2157).

*Gibbs v. Davis*, 27 Fla. 531; 8 So. 633.

26. **Foreign Corporations.** — There are no statutory provisions prescribing the conditions upon which foreign corporations may do business in this State.

*Duke v. Taylor*, 37 Fla. 64; 19 So. 172.

## GEORGIA.

(The references cited below are to the Code of Georgia, 1895, unless otherwise stated.)

1. **Statute under which Business Corporations may incorporate.** — The Business Corporation Act of Georgia is to be found in the provisions of secs. 1831–1891, 2350, of the Civil Code of 1895. Under it a private corporation may be formed for any purpose except banking, insurance, railway, canal, navigation, express, and telegraph companies, by application to the superior court of the county in which the corporation desires to transact business.

*Atherton v. Company*, 71 Ga. 106; *Ellington v. Company*, 93 Ga. 53; 19 S. E. 21; *P. & M. Bank v. Pedgett*, 69 Ga. 159.

2. **Incorporators.** — There must be at least two incorporators. There are no residential requirements (sec. 2350; see also sec. 1854).

*Mather v. Morgan*, 72 Ga. 517; *Waycross, etc. Ry. Co. v. Offerman*, 109 Ga. 827; 35 S. E. 275.

3. **Contents of Petition for Charter.** — The petition addressed to the superior court must state:

a. **Purposes.** — The objects of the corporation and the particular business proposed to be carried on. It is doubtful whether under this section a corporation may be incorporated to carry on more than one line of business.

b. **Name.** — Similarity of names is not permitted.

*c. Capital Stock.* — The amount of capital stock to be employed and actually paid in. Capital stock may be any amount.

*d. Domiciliary Office.* — The principal place of business must be set forth.

*e. Duration.* — Corporate existence is limited to twenty years (sec. 2350).

*In re Devaux*, 54 Ga. 673; *Hendrix v. Academy*, 73 Ga. 437; *Davis v. Company*, 17 Ga. 323; *Daniel v. Wilson*, 91 Ga. 238; 18 S. E. 134.

**4. Statutory Powers.** — In addition to a statutory enumeration of common law powers, the following additional powers are conferred: To receive donations by gift or will; to create a lien upon the stock for debts due from stockholders (secs. 1852, 2825). The rights of majority and minority stockholders are enumerated in the statute (secs. 1859, 1860). Corporators have an interest in the franchises of the corporation of which they cannot be deprived except by due process of the law. Mandamus will lie against the corporation to enforce such right if there is no other legal remedy (Cons., Art. IV. sec. 2, p. 4. See also, as to special powers of mining corporations, Laws of 1904, p. 51).

*Trust Co. v. State*, 109 Ga. 736; 35 S. E. 323; *Waycross, etc. Ry. Co. v. Offerman*, 109 Ga. 827; 35 S. E. 275; *Bradford v. Company*, 58 Ga. 280; *U. B. Ry. Co. v. Company*, 14 Ga. 327.

**5. Procuring the Charter.** — The petition must be published once a week for four consecutive weeks in the nearest newspaper to the point where the corporate business is to be carried on. When the court grants the petition by order to that effect, the petition and the order must be recorded by the clerk of the superior court in the record of "Superior Court charters." The proceedings must also be recorded in the minutes of the court as part of the proceedings thereof. The order itself is to the effect that the petitioners and their successors are incorporated for a term of not exceeding twenty years, with the privilege of renewal at the expiration of that time in the manner provided by statute. Before business can be commenced ten per cent of the authorized capital stock must be paid in. Corporate business must be commenced within two years after the issuance of the charter (sec. 2350).

Existence of a corporation cannot be collaterally attacked. All who have dealt with the corporation as such are estopped from denying its corporate existence.

*Harriman v. Baptist Church*, 63 Ga. 186; *In re Devaux*, 54 Ga. 673; *Etowah Mil. Co. v. Crenshaw*, 116 Ga. 406; 42 S. E. 709; *McCandless v. Company*, 115 Ga. 968; 42 S. E. 449.

**6. Corporate Indebtedness.** — There is no statutory limitation upon the amount of corporate indebtedness. If the corporation desires to issue bonds, it must furnish to the Secretary of State a certified statement in relation thereto (Laws of 1900, chap. 139).

**7. Organization Tax.** — There is no organization tax imposed as such in Georgia. Under the statute the clerk of the court has power to collect the usual fees allowed for similar services in other cases. These fees vary from \$10 to \$20.

**8. Filing and Recording Fees.** — The average cost for filing petition for charter in the office of the county clerk and for docketing and spreading the order granting petition on the minutes, \$12.50. The cost of certified copy of the charter is \$2.50; cost of publishing articles of incorporation depends upon whether the publication is made in a country or city newspaper, and ranges from \$5 to \$20.

**9. Commencing Business.** — Corporations before commencing business must pay in ten per cent of the authorized capital stock (sec. 2350). Business must be commenced within two years (sec. 2350). In order to avoid liability, the incorporators must see that the minimum capital stock has been subscribed for and ten per cent thereof paid in before commencing business.

*McCandless v. Company*, 115 Ga. 968; 42 S. E. 449; *Atherton v. Company*, 71 Ga. 106.

**10. Organization Meeting.** — In the absence of any statute expressly authorizing the holding of meetings elsewhere, organization meetings must be held within the State.

**11. Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State. Directors' meetings may be held without the State if the by-laws so provide.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — The statute makes no special provision with relation to directors other than to provide that they shall represent the corporation and its stockholders. Their number, qualifications, term of office, and powers are left largely for determination to the by-laws adopted by the incorporators (secs. 1858, 1861).

*b. Liabilities.* — Directors are liable for the declaration of any dividend or the distribution of money among the stockholders as profits when such dividend or money is not the legitimate proceeds of such investments. (See Code, sec. 691; Laws of 1902, chap. 131, p. 58.)

**13. Stockholders' Liabilities.** — Stockholders are liable for the debts of the company only to the extent of their unpaid stock subscriptions. Stockholders who are incorporators and who organize the company and transact business under that name before the minimum amount of capital stock has been subscribed for, are liable to creditors to make good the minimum stock with interest (secs. 1889, 1890, 2350). Whenever a stockholder purchases stock upon which there is a liability for unpaid subscriptions, it shall be exempt from further liability unless the corporation fails within six months from the date of the transfer (sec. 1888).

*Fouche v. Bank of Rome*, 110 Ga. 827; 36 S. E. 256; *Wilkinson v. Bertock*, 111 Ga. 187; 36 S. E. 623; *Harrell v. Blount*, 112 Ga. 711; 38 S. E. 56; *Tichenor v. Williams, etc. Co.*, 116 Ga. 306; 42 S. E. 505.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by such officers as the by-laws may designate for that purpose. The par value of stock certificates may be any amount.

**15. Preferred Stock.** — There is no statutory provision expressly authorizing the issuance of preferred stock.

**16. Payment of Capital Stock.** — The statute does not authorize in express terms the issuance of capital stock for anything except cash.

See *Hayden v. Atlanta Cotton Factory*, 61 Ga. 233; *Fouche v. Bank of Rome*, 110 Ga. 827; 36 S. E. 256; *McCandless v. Company*, 115 Ga. 978; 42 S. E. 449; *Macon, etc. Ry. Co. v. Vernon*, 57 Ga. 314.

**17. Books.** — The corporation is required to keep a stock register which is open to the inspection of creditors (Penal Code, sec. 594; Civ. Code, sec. 1891).

**18. Office.** — Every corporation must maintain an office within the State.

**19. Reports.** — No annual reports are required.

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20. **Anti-Trust Statute.** — By statute all combinations made with a view to lessen free competition in the importation or sale of articles, or in the manufacture or sale of articles of domestic growth, are illegal and void (Laws of 1896, p. 68).

In the case of *Brown & Allen et al. v. Jacobs, etc. Co.* (115 Ga. 428), this statute was declared unconstitutional as exempting from its provisions agricultural products and live-stock. The court, however, in this case held that under the common law of the State it was contrary to public policy for unjust combinations to lessen free competition, and that therefore the statute was unnecessary.

21. **Amendments.** — The incorporation act relative to the incorporation of companies through the medium of the superior court is very vague when it comes to the matter of amending charters. Sec. 2350 of the Code, sub. 6, provides that the power conferred upon the superior court to grant charters shall extend to the amendment or renewal of the same. The power thus conferred is held by the courts to be sufficient to permit of the amendment of charters to practically an unlimited extent. (See also Code, secs. 1840–1845 inclusive, as to amendment of charters of banking, insurance, railroad, canal, navigation, express, or telegraph companies. See also Laws of 1902, p. 49.)

*Macon, etc. Ry. Co. v. Gibson*, 85 Ga. 1; 11 S. E. Rep. 442.

22. **Annual License Tax.** — There is no annual license tax.

23. **Extension of Corporate Existence.** Corporate existence may be extended by complying with the statutes in that regard (sec. 2350, sub. 6; Laws of 1897, p. 28).

24. **Dissolution.** — Corporations are dissolved, (1) by expiration of the charter; (2) by forfeiture of the charter; (3) by surrender of franchises; (4) by the death of all its members without provision for its succession (Code, sec. 1882). Still again, a corporation may forfeit its charter by wilful violation of any of the essential conditions on which it was granted; (2) by misuse or non-user of its franchises. Dissolution for either of these causes can be effected only by a court of competent jurisdiction declaring the forfeiture (Civ. Code, secs. 1882, 1883, 1884, 1886).

*Atlanta v. Gate City Gas Light Co.*, 71 Ga. 106; *Georgia Central Ry. Co. v. Tifton, Thomasville, and Gulf Ry. Co.*, 109 Ga. 766.

25. **Foreign Corporations.** — Foreign corporations of States which give like recognition to corporations incorporated in Georgia are recognized upon principles of comity. There are a few minor statutory requirements relative to doing business within the State. (See secs. 1846–1850.)

*V. B. R. R. Co. v. E. T. & G. R. R. Co.*, 114 Ga. 327; *A. C. Society v. Gartell*, 23 Ga. 448; *S. C. Ry. Co. v. People's Sav. Ins.*, 64 Ga. 18.

## HAWAII.

(The references cited below are to chap. 157 of the Revised Laws of Hawaii, 1905, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Hawaii is to be found in the Revised Laws of Hawaii, 1905, chap. 157, secs. 2535–2569 inclusive. Provisions relative to

foreign corporations are to be found in the Revised Laws of 1905, chap. 160, secs. 2623-2629 inclusive. Under this act corporations may, be formed for any purpose excepting banking and professional business.

2. **Incorporators.** — Any number not less than five, a majority of whom must be residents of Hawaii.

3. **Contents of Articles of Association.** — The articles must set forth

a. *Name.* — The name must be followed by the word "Limited."

b. *Domicile.* — Location of its principal office.

c. *Purpose.* — The purpose of the company.

d. *Capital Stock.* — The amount of the capital stock, and if the privilege of subsequent extension thereof is asked for, the limit of such extension.

e. *Officers.* — Number and designation of officers proposed. The duration of the corporation should also be stated, and this cannot exceed fifty years (sec. 2539). In the provisions of law with reference to the creation of corporations by charter (having special reference to quasi-public and eleemosynary corporations) is to be found the following: "In the case of joint stock companies, there shall, in addition to a written petition accompanied by proofs that three-fourths of the shares have been subscribed for, be also filed at the same time in the office of the Territorial Treasurer, a certificate, setting forth the location of the proposed company, the object of the incorporation, the amount of stock proposed, and, if the privilege of subsequent extension thereof is asked for, the limit of the extension, the proposed duration of the company, the time within which it is to organize, whether the liability of stockholders is to be limited to the amount of their stock or otherwise; and also whether the whole or any part of the capital stock is to be paid in before commencing operations, and if in part, what part (sec. 2545).

4. **Statutory Powers.** — In addition to a statutory enumeration of the common law powers, corporations have the following additional powers. To issue preferred stock. To forfeit stock for non-payment of assessments. To vote at stockholders' meetings by proxy (secs. 2551, 2552, 2554, 2558, 2559, and 2560).

5. **Procuring the Charter.** — The incorporators must sign and acknowledge the articles of association before some officer authorized to take acknowledgments. The articles of association must then be recorded in the office of the treasurer of the territory. They must be accompanied by an affidavit, sworn to by the president, secretary, and treasurer of the corporation, setting forth the number of shares, amount of capital stock, names of subscribers to the capital stock, and the amount paid thereon. When the object of the corporation is to take over and conduct any existing agricultural, manufacturing, shipping, or other business or enterprise, affidavit must then contain a full description of the property intended to represent the capital stock of the proposed corporation, a detailed valuation of each item of the property, and copy of the conveyances to be made by the owners of such business to the proposed corporation (secs. 2536-2538 inclusive).

Hackfeld v. King, 11 H. 5.

6. **Corporate Indebtedness.** — The amount of indebtedness must at no time exceed the amount of the capital stock (sec. 2564).

7. **Organization Tax.** — There is no organization tax imposed upon corporations organized in Hawaii. There is, however, a stamp tax of \$25 on all charters or articles of association (secs. 1298, 1320).

8. **Filing and Recording Fees.** — For filing and recording in the office

of the territorial treasurer, approximately \$5; for every copy of any document, 50 cents per hundred words (sec. 1181).

9. **Commencing Business.** — Corporations may commence business as soon as three-fourths of the authorized capital stock has been subscribed for, and ten per cent thereof shall have been paid in, or the corporation shall have acquired property of a value equal to ten per cent of its capital (sec. 2540).

10. **Organization Meeting.** — Organization meeting must be held within the Territory (see, however, sec. 2555).

O. S. Co. v. Austin, 5 H. 555.

11. **Meetings of Stockholders and Directors.** — In the absence of unanimous consent of stockholders, the meetings must be held within the Territory. The law, however, provides that when all the stockholders are present, either in person or by proxy, and shall sign a written consent thereto on the record of such meeting, the doings of such meeting shall be valid (secs. 2555, 2556). It would appear in the absence of any statute providing otherwise, that directors' meetings may be held without the Territory if the by-laws so provide.

Brown v. Carter, 15 H. 333.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There is no limit to the number of directors, nor are any residential qualifications prescribed. The matter is left to be regulated by the by-laws.

*b. Liabilities.* — Directors are individually liable for making dividends, except from the profits of the business, for the withdrawal of capital stock, and are also criminally liable for making false statements in affidavits, reports, etc. (secs. 2561, 2565).

13. **Stockholders' Liabilities.** — Stockholders are liable only to the extent of their unpaid stock subscriptions (secs. 2562-2564 inclusive).

14. **Stock Certificates.** — Every stockholder is entitled to a certificate signed by such officers as the by-laws may prescribe. Par value may be any amount (see sec. 2550).

15. **Preferred Stock.** — Preferred stock may be issued upon the vote of three-fourths of all the shares at a meeting of the stockholders called for that purpose. Dividends on preferred stock are limited to ten per cent per annum out of the annual profits of the company. The statutes give to the holders of preferred stock the right to convert the same into common stock at their election at any time. Cumulative dividends are forbidden by law (sec. 2552).

16. **Payment of Capital Stock.** — Stock may be issued in exchange for money or money's worth (secs. 2538, 2540).

17. **Books.** — The stock ledger must be kept at the principal office of the corporation, and be open to the inspection of stockholders and creditors during business hours (sec. 2548).

18. **Office and Agent.** — The corporation must have a principal office at the place designated in the articles of association (secs. 2536-2548).

19. **Reports.** — Annual reports to the Treasurer of the Territory are required (secs. 1282, 2566).

20. **Anti-Trust Statute.** — There is no local anti-trust statute in force in Hawaii (see, however, sec. 2541 relative to perpetual charters and monopolies).

21. **Statutory Grounds for Forfeiture of Charter.** — There are no special statutes in force relative to this matter.

22. **Amendments.** — The Territorial Treasurer, with the approval of the

governor, has power to permit and allow amendment of articles of association, provided they confer no other corporate powers or privileges than could have been lawfully conferred or obtained in the original articles of association (secs. 2545, 2546).

23. **Extension of Corporate Existence.** — The Territorial Treasurer has power on the expiration of any charter to renew the same on application to him for that purpose by two-thirds of the stockholders of said company and the said explanation to him of the state of its affairs (sec. 2543).

24. **Dissolution.** — Corporate dissolution may be obtained by petition to the Territorial Treasurer, together with certificate setting forth the date of the meeting of the stockholders called for that purpose, at which it was decided by a vote of three-fourths of the stockholders to dissolve the corporation, which certificate shall be signed by the presiding officer or secretary of said meeting. The Treasurer shall thereupon enter such petition and certificate of record in his office, and after sixty days' publication of notice in such manner as he shall prescribe, he shall proceed to consider the same, and when satisfied that the vote certified has been truly taken, and that all claims against the corporation are discharged, he shall declare such corporation dissolved (secs. 2568, 2569).

25. **Annual License Fees.** — A tax of two per cent is levied annually on the net income above actual operating and business expenses of all companies doing business in the Territory, no matter where created or organized (sec. 1279).

Robertson v. Pratt, 13 H. 590; Peacock v. Pratt, 121 Fed. Rep. 772.

26. **Foreign Corporations.** — Every foreign corporation carrying on business in the Territory or acquiring real estate therein, must file in the office of the Territorial Treasurer (1) a certified copy of its charter, (2) the names of its officers, (3) the name of some person within the Territory of Hawaii upon whom process may be served, (4) a certified copy of the by-laws of the corporation. Upon compliance with the foregoing, and upon payment to the Treasurer of a fee of \$50, the corporation will be permitted to transact business within the Territory. It is also necessary to procure an annual license from the Territorial Treasurer. The fee for this license is one-fourth of a mill on each dollar of authorized capital stock. The minimum fee, however, is \$150 (secs. 2623-2626 inclusive). Annual reports are required the same as of domestic corporations (secs. 2627-2629).

## IDAHO.

(The references cited below are to the Civil Code of Idaho, 1901, unless otherwise stated.)

### 1. Statutes under which Business Corporations may be incorporated.

— The Business Corporation Act of Idaho is found in the Civil Code of that State, secs. 2085-2162, as amended by the Session Laws of 1901, 1903, and 1905. Special acts are provided for bridge, ferry, flume, boom, gas, fidelity, domestic, insurance, railroad, telegraph, telephone, water, canal, and wagon road companies. (See Laws of 1905, pp. 150, 162.)

2. **Incorporators.** — May be any number of persons not less than three, one of whom must be a *bona fide* resident of the State (Session Laws of 1905, Act No. 140, p. 163).

3. **Contents of the Articles of Incorporation.** — The articles must set forth:

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- a. Name.* — Similarity of names is not forbidden.
- b. Purpose.* — The Secretary of State allows articles to be filed providing for any number of purposes not covered by special acts.
- c. Domiciliary Office.* — The place where the principal business is to be transacted must be set forth.
- d. Corporate Existence.* — May be any number of years not exceeding fifty.
- e. Board of Directors.* — The board of directors or trustees, and the names and residences of those who are appointed for the first year. The number must not be less than three nor more than fifteen. The directors must all be stockholders, and a majority residents of the State (sec. 2102, as amended by Laws of 1905, p. 164).
- f. Capital Stock.* — The amount of the capital stock and the number of shares into which it is divided. The capital stock as well as the par value of the shares may be any amount.
- g. Stock Subscriptions.* — If there is capital stock, the amount actually subscribed and by whom should be set forth (sec. 2089).
- h.* Any corporation may at its option provide in its articles or by amendment thereof for the election of one-third of its directors for the term of one year, one-third for two years, and one-third for three years (sec. 2089, as amended by Session Laws of 1905, p. 166).
- i.* If it is desired to hold meetings of the board of directors without the State, provision may be made therefor in the articles of incorporation.
- 4. Statutory Powers.** — In addition to a statutory enumeration of common law powers the following additional powers are granted: To classify and remove directors; to authorize voting by proxy; to forfeit stock for non-payment of assessments; to extend corporate existence (secs. 2107, 2109, 2125-2187, 2144, 2149; Laws of 1905, p. 164).
- 5. Procuring the Charter.** — The articles must be subscribed and acknowledged by each of the incorporators. The articles must then be filed in the office of the county recorder of the county in which the principal place of business of the company is to be transacted, and a copy thereof, certified by such recorder, must be filed with the Secretary of State. Thereupon the Secretary of State issues to the corporation a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon the corporate existence commences. If it is proposed to purchase or locate property in any other county of the State, there must be filed with the county recorder of that county, within sixty days after such purchase or location is made, a certified copy of the articles of incorporation. The due incorporation of any company or its right to exercise corporate powers cannot be inquired into collaterally in any private suit to which such *de facto* corporation may be a party (secs. 2091, 2094, 2097, 2147; Session Laws of 1905, p. 161).
- 6. Corporate Indebtedness.** — Must not exceed amount of authorized capital stock (sec. 2148).
- 7. Organisation Tax.** — When the capital stock does not exceed \$25,000, the organization tax is \$5; when it does not exceed \$100,000, \$10; when it does not exceed \$500,000, \$20; for all capitalization in excess of \$500,000, \$25 (Laws of 1901, p. 141).
- 8. Filing and Recording Fees.** — To the Secretary of State for recording articles of incorporation, 20 cents per folio; for issuing certificate of incorporation, \$3; for issuing certified copy of articles of incorporation, 20 cents per folio for copy and \$1 for certificate; for filing articles in recorder's office



in local county, 50 cents; for recording articles therein, 20 cents per folio. For certified copy of articles of incorporation by recorder of county where principal place of business is located, 20 cents per folio.

9. **Commencing Business.** — Corporations may commence business as soon as the articles of incorporation are filed. Within one month after filing the articles of incorporation a code of by-laws must be adopted. If the corporation does not organize and commence business or the construction of its works within one year from the date of its incorporation, its corporate powers cease (secs. 2094, 2077, 2098, 2147).

10. **Organization Meeting.** — The incorporators within one month from the date the charter is issued should sign a written agreement fixing the time and place within the State for the organization of the corporation. In the absence of such written agreement the meeting is called by advertisement of it in advance of the date of the meeting in some newspaper published in the county in which the principal place of business of the corporation is located. The written assent of the holders of two-thirds of the stock subscribed or two-thirds of the members shall be sufficient to adopt a code of by-laws without a meeting for that purpose. The statute sets forth certain matters which may be covered by the by-laws, including penalties for violation of by-laws not exceeding in any case \$100 for any one offence. The by-laws must be certified by a majority of the directors and the secretary of the corporation and copied in the book of by-laws to be kept at the principal office of the corporation within the State. Immediately after the adjournment of the incorporators' meeting the directors named in the articles of incorporation should meet, and after the election of a chairman and secretary should proceed to the election of the officers named in the by-laws. These officers under the statute must consist of a president, who is himself a director, and a secretary and treasurer. The law provides that at the first meeting at which the by-laws are adopted, or at such subsequent meeting as may be then designated, directors must be elected to hold their office for one year and until their successors are elected and qualify. Organization meeting must be held within the State in the absence of any statute authorizing such meetings to be held without the State (sec. 2103; Session Laws of 1905, pp. 165, 166).

11. **Meetings of Stockholders and Directors.** — All meetings of stockholders must be held at the principal place of business of the corporation within the State (Laws of 1905, p. 165). Meetings of the board of directors or executive committee must be held at the principal place of business of the corporation within the State unless otherwise provided in the articles of incorporation or amended articles or by-laws or by resolution of the board (Laws of 1905, pp. 164-166).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be a board of not less than three nor more than fifteen directors, to be elected from among the stockholders. At least one of the directors must in all cases be a citizen and actual *bona fide* resident of the State. The directors must all be stockholders in an amount to be fixed by the by-laws. A majority of the board must be present in order to constitute a quorum thereof. Railroad, wagon road, telegraph, and telephone companies are authorized to appoint an executive committee equal in number to a quorum of the board, such committee to have all the rights and powers and privileges of the full board (Laws of 1905, pp. 161-165).

*b. Liabilities.* — Directors are jointly and severally liable for authorizing the payment of dividends other than from the surplus profits arising from the

business. They are also liable for dividing or withdrawing or paying to the stockholders any part of the capital stock unless they enter their dissent on the minutes of the directors at the time, or when not present as soon as they are informed of the action referred to. They are also subject to further liability for certain acts specified in the Penal Code (secs. 2106, 2113; P. C., 5010-5026 inclusive).

13. **Stockholders' Liabilities.** — Stockholders are liable for the amount unpaid upon the par or face value of the shares owned by them. To avail themselves of this provision of the statute they must cause to be written or printed under the corporate name on its stock certificates, letters, bill heads, and all official documents the word "limited" (secs. 2119, 2120; see also Cons., Art. XI. sec. 17).

14. **Preferred Stock.** — There is no statutory provision expressly authorizing the issuance of preferred stock.

15. **Payment of Capital Stock.** — Under the Idaho Constitution no corporation can issue stock except for labor done, services performed, or money or property actually received. This statute, however, provides that money actually paid upon the indebtedness of the corporation as provided by such statute may be credited upon stock subscriptions to the full amount so paid (Cons., Art. XI. sec. 9; Laws of 1899, p. 115, amending sec. 2119).

16. **Books.** — The stock and transfer books must be kept within the State at the principal office of the corporation. Also a book of by-laws must be kept at the company's office within the State. All books are open to inspection of stockholders and creditors (secs. 2101, 2150, 2151).

17. **Stock Certificates.** — Each stockholder is entitled to a certificate showing the number of shares owned by him, signed by the president and secretary (sec. 2121).

18. **Office.** — Every corporation must maintain an office within the State (secs. 2101, 2151).

19. **Reports.** — No reports are required to be filed.

20. **Anti-Trust Statute.** — Combinations for fixing prices on any article of commerce, of produce, of sale, or of consumption by the people are illegal. (See Cons., Art. XI. sec. 18.)

21. **Statutory Ground for Forfeiture of Charter.** — Failure to organize and transact the corporate business or the construction of corporate works within one year from the date of incorporation is a ground for forfeiture (sec. 2147).

22. **Extension of Corporate Existence.** — Every corporation formed for a period less than fifty years may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made by a two-thirds vote of the stockholders cast at a meeting called by the directors for that purpose. The certificate of the proceedings must be signed by the chairman and secretary of the meeting and be filed in the office of the county recorder where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the Secretary of State (secs. 2160, 2161).

23. **Annual License Tax.** — There is no annual license tax.

24. **Amendments.** — Articles may be amended for the purpose of increasing the number of directors by vote of a majority of the stockholders. The amendment when adopted must be filed in the manner provided for the filing of original articles (Laws of 1905, p. 161). Corporations may increase or decrease their capital stock in the following manner: (1) By a majority vote of the directors there may be called a meeting of the stockholders, to be

convened for the purpose of increasing or diminishing the capital stock. (2) Personal notice of the time and place of such meeting, and the object thereof, must be served on each stockholder resident in this State; or in lieu thereof the notice must be published in every issue of a newspaper published in the county where the principal place of business is located, for four weeks successively. (3) The notice must also contain the amount to which it is proposed to increase or diminish the capital stock. (4) The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation or the estimated cost of the works which it may be the object or purpose of the corporation to construct. (5) At least two-thirds of the entire capital stock must vote in favor of such increase or diminution before the same is effected. (6) A certificate signed and verified by the chairman and secretary of the meeting must be made, showing a strict compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, the vote by which the object was accomplished. (7) This certificate must be subscribed by a majority of the directors and duplicates made, one to be filed in the office of the Secretary of State, as provided for by the original articles of incorporation, and thereupon the capital stock is so diminished or increased. (8) The written assent of the holders of three-fourths of the subscribed capital stock is as effectual to authorize the increase or diminution of the capital stock as if the meeting were called and held; and upon written assent, the directors may proceed to make the certificate herein provided for (sec. 2637). The number of directors may be increased by a majority vote of the stockholders thereof, which amendment when adopted must be filed in the manner provided for the filing of original articles (Laws of 1905, p. 161).

Corporations may also change their principal place of business from one place to another within the State. Before such change is made the consent in writing of the holders of two-thirds of the capital stock must be obtained and filed. Notice of such intention to change must be published at least once a week for three successive weeks, giving the name of the county where it is situated and that to which it is intended to remove (sec. 2118).

**25. Dissolution.** — Corporations may be dissolved upon application to the courts (sec. 2159; C. C. P., secs. 3834-3840).

*S. S. & T. Co. v. Piper*, 4 Idaho, 463; 40 Pac. 144.

**26. Foreign Corporations.** — Every foreign corporation before doing business within the State must file with the county recorder of the county in which its principal business is to be transacted a copy of its articles of incorporation, certified by the Secretary of State of the State in which said corporation was organized, and file in the office of the Secretary of State a copy of its articles certified by the recorder, and pay to the Secretary of State the same fees as provided for incorporating domestic corporations. Must within three months from the time it commences to do business within the State also file in the office of the clerk of the district court of the county where such principal place of business is to be located, and also in the office of the Secretary of State, a designation of some person residing in said county, on whom process may be served (Cons., Art. XI. sec. 10; R. S., secs. 2119, 2162, as amended by Laws of 1903, pp. 49, 50; see also Laws of 1905, p. 87).

*Vermont Loan & Trust Co. v. Hoffman*, 5 Idaho, 376; 49 Pac. 314; *Boyer v. N. P. R. R. Co.*, Idaho; 66 Pac. 826; *Thum v. Pyke*, Idaho; 66 Pac. 167; *B. C. M. Co. v. Frizzell* (Ida.), 81 Pac. 58.

# ILLINOIS.

(The references cited below are to the Revised Statutes, 1899, chap. 32, unless otherwise stated.)

**1. Statute under which Business Corporations may be incorporated.** — The Business Corporation Act of Illinois is found in the Revised Statutes of that State, secs. 985-1063 inclusive. Special acts are provided for banking, trust, insurance, real estate, brokerage, and railway corporations. (See also Laws of 1904, chap. 66.)

*People ex rel. Bonney v. Rose*, 188 Ill. 268.

**2. Incorporators.** — Any number of persons not less than three nor more than seven may form a corporation. There are no residential requirements (sec. 2).

**3. Statement of Incorporators (sec. 2).** — The incorporators must make a statement setting forth:

*a. The Name of the Proposed Corporation.* — No license can be issued to two companies having the same or a similar name as any domestic corporation, nor can any domestic corporation assume the same or a similar name to that of any foreign corporation previously admitted to do business in the State (secs. 2, 28½).

*b. Purpose.* — The statute uses the singular noun "object." The Secretary of State permits the insertion of any number of purposes not covered by special acts.

*c. Capital Stock.* — Capital stock may be any amount.

*d. Number of Shares.* — The par value of the shares must be not less than \$10 nor more than \$100 (sec. 7).

*e. Domiciliary Office.* — The location of the principal office within the State.

*f. Duration.* — The corporate existence cannot exceed ninety-nine years (Laws of 1905, p. 130).

*Snell v. City of Chicago*, 133 Ill. 413.

**4. Statutory Powers.** — The statute enumerates the common law powers of corporations. There is a limitation even on these to the extent that all real estate acquired by the corporation in satisfaction of any liability shall be offered at public auction at least once in every year unless the same is necessary and suitable for the business of the corporation. The power to adopt by-laws is granted to the board of directors (sec. 6). The statute expressly authorizes mining and manufacturing corporations to hold stock of one or more railroads connecting different plants of the corporation with each other and with other railroads or wharves. Whenever consolidation takes place the consolidated company is liable for all debts of the two consolidated corporations. Power is also given to authorize voting of stockholders by proxy, to permit cumulative voting for directors, to classify directors, and to forfeit stock for non-payment of assessments (secs. 3, 5, 7; Cons., Art. XI. sec. 3; see also Laws of 1904, chap. 66).

*Com. N. B. v. Burch*, 141 Ill. 519; 31 N. E. 420; *People ex rel. v. P. P. Car Co.*, 175 Ill. 125; *First Nat. Bank v. Chicago*, 191 Ill. 128.

**5. Procuring the Charter.** — The statement must be signed and acknowledged by each of the incorporators and must then be filed in the office of the

Secretary of State. If the object for which such corporation is proposed to be organized is clearly and distinctly stated and is a lawful object, the Secretary of State shall thereupon issue to said persons a license as commissioners to open books for subscription to the capital stock of the proposed corporation at such time and place as they may determine. Power is given to the Secretary of State to propound to the incorporators such interrogatories as he shall deem necessary to ascertain the object for which the corporation is formed. The commissioners are required to make a full report of their proceedings, including a copy of the notice of the opening of books of subscription and of the subscription list, a statement of the amount of capital, not less than one-half actually paid in, the amount of such capital not paid in, what disposition has been made of stock subscribed and not paid, and if any proportion of the capital stock has been paid in property the same shall be appraised by such commissioners and they shall report the fair cash value thereof. The report must also contain the names of the directors elected and their residence, terms of office, and must be sworn to by at least a majority of the commissioners and filed in the office of the Secretary of State. The latter thereupon issues a certificate of the complete organization of the corporation, making a part thereof a copy of all the papers filed in his office in and about the organization of the corporation duly authenticated under his hand and seal of state. This certificate must then be recorded in the office of the county where the principal office of said company is located, whereupon the corporation shall be deemed fully organized and may proceed to do business (Laws of 1905, pp. 130-133). The corporation must be organized and proceed to do business within two years after the issuance of the license by the Secretary of State relative to the opening of books for subscription to the capital stock.

*People v. Rose*, 188 Ill. 268; 59 N. E. 432; *Elgin Ill. Watch Co. v. Loveland*, 132 Fed. 41; *Gade v. Company*, 165 Ill. 367; *Edwards v. Company*, 190 Ill. 467; *Ricker v. Larkin*, 27 Ill. App. 625.

**6. Corporate Indebtedness.** — Corporate indebtedness should not exceed the authorized capital stock (sec. 16).

**7. Organization Tax.** — The organization tax on any capitalization up to \$2,500 is \$30; up to \$5,000 is \$50; over \$5,000, \$50, and an additional \$1 for each thousand dollars of capitalization over \$5,000 (Laws of 1899, p. 117).

**8. Filing and Recording Fees.** — There is no filing fee payable to the Secretary of State other than the organization tax. There is a charge for recording the statement of incorporators and the return of the commissioner of 15 cents per hundred words. For certified copy of the foregoing the charge is 15 cents per hundred words and \$1 for affixing the secretary's certificate thereto. The charge for filing amendments to articles of incorporation is \$1. The recording fees in local county office are as follows: In counties of first class (population not over 25,000), 10 cents per hundred words; in counties of second class (over 25,000 and not exceeding 100,000), 8 cents per hundred words and certificate 25 cents additional; in counties of third class (population exceeding 100,000), 6 cents per hundred words and 25 cents additional for certificate.

**9. Commencing Business.** — Corporations may commence business as soon as the Secretary of State issues a certificate of complete organization and the same is recorded in the office of the recorder of deeds of the county where the principal place of business of said corporation is located. The cor-

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poration must organize and proceed to business within two years after the Secretary of State issues his certificate of complete organization (sec. 4).

*People v. N. S. Bank*, 129 Ill. 618; 23 N. E. 288; *Gent. v. M. & M. I. Co.*, 107 Ill. 652; *Allman v. Company*, 88 Ill. 521; *Merrick v. Company*, 111 Ill. Ap. 153.

**10. Organization Meeting.** — In the absence of any statute providing otherwise, this meeting must be held within the State. The commissioners appointed by the Secretary of State to receive stock subscriptions have power under the statute to convene a meeting of the subscribers to the capital stock of the corporation for the purpose of electing directors, etc. Notice of this meeting may be waived in writing (the statute requires ten days' notice), the time and place fixed for said meeting to be designated therein. At this meeting the subscribers to the capital stock may vote in person or by proxy. Cumulative voting is permitted if desired. Stockholders may divide the board of directors into three classes, to hold office for one, two, and three years respectively. After the Secretary of State has issued a certificate of complete organization, the board of directors should meet and after effecting a temporary organization should first adopt a code of by-laws. They then should proceed to the election of a president, secretary, and treasurer, and such other officers as shall be designated by the by-laws so adopted (sec. 3).

**11. Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State. Directors' meetings to be valid must be held within the State, unless any action taken by the board without the limits of the State is either authorized or the action thereat taken ratified by a vote of two-thirds of the directors cast at a regular meeting of said board (secs. 20, 22).

*Harding v. Company*, 182 Ill. 551; 55 N. E. 577.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must not be less than three nor more than eleven directors. There are no residential requirements. Directors may be divided into classes if desired. The right to cumulate votes for directors is mandatory (secs. 3, 6).

*Fey v. Company*, 32 Ill. Ap. 618.

*b. Liabilities.* — If the indebtedness of any corporation shall exceed the amount of its capital stock, the directors assenting thereto are individually liable for such excess to the creditors of the corporation. They are also jointly and severally liable for all debts of the corporation then existing or thereafter contracted when they declare and pay any dividends when the corporation is insolvent or any dividend the payment of which would render the corporation insolvent or which diminishes the amount of its capital stock; also for assuming to exercise corporate powers before all the capital stock is subscribed in good faith (secs. 16-19, 21).

*Greene v. Masten et al.*, 66 Ill. Ap. 345; *Kent v. Clark*, 181 Ill. 237; 54 N. E. 967.

**13. Stockholders' Liabilities.** — Stockholders are personally liable for the amount unpaid upon their stock (sec. 8). The law also provides that all persons assuming to exercise corporate powers or to use a corporate name without complying with the law in regard to procuring charters before all stock named in the articles of incorporation is subscribed in good faith, shall be liable for all debts and liabilities contracted by them in the name of such corporation (sec. 18).

*Sprague v. Nat. Bank*, 172 Ill. 149; 50 N. E. 19; *First Nat. Bank v. Company*, 191 Ill. 128; 60 N. E. 859; *Sherwood v. Bank*, 195 Ill. 112; 62 N. E. 835; *Foote v. Bank*,

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194 Ill. 600; 62 N. E. 834; *McCoy v. Exposition*, 186 Ill. 356; 57 N. E. 1043; *Florsheim v. Bank*, 192 Ill. 382; 61 N. E. 491; *Coleman v. Howe*, 154 Ill. 458, 37 N. E. 725.

**14. Preferred Stock.** — There is no statutory provision expressly authorizing the issuance of preferred stock.

*First Nat. Bank v. Company*, 191 Ill. 128; 60 N. E. 859.

**15. Payment of Capital Stock.** — The statute is silent as to how the capital stock shall be paid. Under the common law rule, in the absence of any statutory prohibition, stock may be paid for in cash or in property taken in good faith at a fair valuation.

*G. C. & S. R. Co. v. Kelly*, 77 Ill. 426; *Higgins v. Lansingh*, 154 Ill. 301; *Farwell v. Company*, 161 Ill. 522; *S. R. C. S. Co. v. Rankin*, 152 Ill. 622; *Sprague v. Nat. Bank*, 172 Ill. 149; *Dean v. Baldwin*, 99 Ill. App. 582; *Parmelee v. Price*, 208 Ill. 544; 70 N. E. 725; *M. B. I. Co. v. Company*, 210 Ill. 26; 71 N. E. 22.

**16. Books.** — The directors must keep at the principal office within the State books of account of the corporate business (sec. 13). They are open to inspection of stockholders.

**17. Stock Certificates.** — Each shareholder is entitled to a certificate showing the number of shares owned by him signed by such officers as the by-laws shall prescribe. Par value of shares must not be less than \$10 nor more than \$100.

**18. Office.** — Every corporation must maintain an office within the State (secs. 2, 13).

**19. Reports.** — Before receiving a certificate of complete organization, corporations shall file with the Secretary of State a statement showing the post-office address of its business office, giving street and number, and it shall annually between February 1st and March 1st file with the Secretary of State a statement showing the location of the principal office within the State, with town, street, and number, names of its officers and their residences, — town, street, and number, — date of expiration of their terms of office; whether or not the corporation is pursuing an active business under its charter, and the kind of business; report must be under the corporate seal, signed and sworn to by some officer of the corporation, and a fee of \$1 must be paid to the Secretary of State (Laws of 1903, pp. 121, 122). Within twenty days from December 1st of each year, a statement must be filed with the Secretary of State, and recorded with the recorder of the county wherein the principal place of business of the corporation is located, showing the real estate holdings of the corporation.

**20. Anti-Trust Statute.** — Illinois has an elaborate statute forbidding pools, trusts, and combinations of every class and description. This statute has in part at least been declared unconstitutional (Crim. Code, secs. 269 a, 269 b, 615).

*D. & C. F. Co. v. People*, 156 Ill. 448; 41 N. E. 188; *Harding v. Company*, 182 Ill. 551; 55 N. E. 577.

**21. Statutory Ground for Forfeiture of Charter.** — The charter may be forfeited for failure to organize and commence business within two years from the date of incorporation. It is also subject to forfeiture for entering into illegal trusts, pools, and combinations (secs. 4, 269 m).

*N. & S. R. S. Co. v. People*, 147 Ill. 234; 35 N. E. 608; *Independent Medical College v. People*, 182 Ill. 274; 55 N. E. 345; *People v. Rose*, 207 Ill. 352; 69 N. E. 762.

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**22. Extension of Corporate Existence.** — There is no statutory provision for extending corporate existence after the expiration of the term limited in the charter. (See sec. 10.)

*People ex rel. Stickney v. Marshall*, 1 Gilm. 672.

**23. Annual License Tax.** — There is no annual license tax.

**24. Amendments.** — To change the corporate name, place of business, enlarge or change the object for which the corporation was formed, to increase or decrease the capital stock, to change the number of shares of capital stock, to increase or decrease the par value of shares of capital stock, to increase or decrease the number of directors, or to consolidate with other corporations requires the calling of a special meeting of the stockholders by the board of directors. This meeting must be called by delivering personally or depositing in the post-office, at least thirty days before the date of such meeting, a notice signed by a majority of said directors, stating the time, place, and object thereof. A similar general notice must also be published for three successive weeks in some newspaper printed in or nearest the county in which the principal office of the corporation is located. A two-thirds vote of all the stock of the corporation is necessary for the adoption of the proposed amendment. Thereafter a certificate must be prepared, signed, and verified by the affidavit of the president under the corporate seal. This must be filed in the office of the Secretary of State and a like certificate filed for record in the office of the recorder of deeds of the county where the principal business office of the corporation is located. There must also be published, in some newspaper published in the county above referred to, a notice of such change, for three successive weeks (secs. 50-54 as amended by Laws of 1903, pp. 116, 117).

*Sykes v. People*, 132 Ill. 32.

**25. Dissolution.** — Any court of competent jurisdiction may decree dissolution of a corporation upon petition therefor. Voluntary dissolution may be effected by vote of two-thirds of capital stock (secs. 49 a, 49 b, 149).

**26. Foreign Corporations.** — All foreign corporations doing business within the State must make application to the Secretary of State, signed and sworn to by the president and secretary, stating what business such corporation proposes to pursue under its charter, the amount of capital stock of such corporation, whether it is transacting or intends to transact business in any State or country, the proportion of its business intended to be carried on in the State of Illinois, the amount paid in upon its capital stock, what property and assets and estimate of the value thereof will be employed in the business of such corporation in the State of Illinois; if any of its capital subscribed has not been paid in what disposition is to be made thereof, the names of the president, secretary, and directors of said corporation and their residences, where its principal office in Illinois will be located, and the name and address of some attorney in fact upon whom process may be served, and if required by the Secretary of State, the names and residences of all of the stockholders in said corporation. Such corporation shall file with the Secretary of State a copy of its articles of incorporation duly certified and authenticated by the officer who issued the original, or by the recorder or registrar of the office in which said original articles may have been recorded. The Secretary of State is also given power to propound additional interrogatories if he sees fit. Upon the admission of such corporation to do business the Secretary of State shall issue a certified copy of all papers, including a certified copy of the charter of



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such corporation, and shall state in the certificate of authority to do business issued by him, the powers and objects of such corporation which may be exercised in this State, and no corporation shall by the certificate of the Secretary of State be authorized to transact any business in this State for the transaction of which the corporation cannot be organized under the laws of this State. No foreign corporation shall exercise powers in this State not authorized by the provisions of its charter. Every foreign corporation admitted to do business in Illinois shall keep on file in the office of the Secretary of State an affidavit of the president and secretary showing the location of its principal business office in the State of Illinois, the name of some person who may be found at such office for the purpose of accepting service upon said corporation in all suits that may be commenced against it, and as often as such corporation shall change the location of its office or its attorney for receiving and accepting service a new affidavit shall be filed. Foreign corporations shall be required to make such reports from time to time as are required to be made by similar domestic corporations. Only such real estate may be held as may be necessary for the proper carrying on of its legitimate business.

Before being authorized to do business it must pay into the office of the Secretary of State, upon the proportion of its stock represented by its property and business in Illinois, fees equal to fees required of similar corporations formed within and under the laws of this State. Foreign corporations failing to comply with the provisions of law are subject to a penalty of not less than \$1000 and not exceeding \$10,000 (Session Laws of 1905, pages 124-129 inclusive).

*Spry Lumber Co. v. Chappell*, 184 Ill. 539; 56 N. E. 794; *Richardson v. U. S. M. & T. Co.*, 194 Ill. 259; 62 N. E. 606; *Bradbury v. Company*, 113 Ill. Ap. 600.

## INDIANA.

(References are to Burns' Annotated Indiana Statutes, Revision of 1901, unless otherwise stated.)

### 1. Statute under which Business Corporations may incorporate. —

The Business Corporation Act of Indiana is to be found in Burns' Annotated Statutes of 1901, secs. 3423-3452, 4583-4622. Important amendments to the original act are to be found in the Session Laws of 1901 and 1903. The sections relative to manufacturing, mining, and mechanical companies are separate and apart from the General Act and are to be found in secs. 5051-5128 of the same statutes, and in Laws of 1905, chap. 139.

2. **Incorporators.** — Any number of persons not less than three may be incorporators. There are no residential requirements (secs. 4583, 5051; Laws of 1903, chap. 73; Laws of 1905, chap. 139).

3. **Contents of the Articles of Association.** — The articles of association for all ordinary business corporations incorporated under Act of 1901, p. 289 (Burns, sec. 4583), must set forth:

a. **Name.** — The corporate name of the proposed corporation. Similarity of names is forbidden as to domestic corporations.

b. **Capital Stock.** — The articles must set forth the amount of capital stock and the number of shares into which the same shall be divided, with the par value of the same. The capital stock may be any amount (except gas and oil companies, where capital stock is limited to \$2,000,000), and the par value

of the shares may be any amount not exceeding \$100. (See Laws of 1903, chap. 128.)

*c. Purposes.* — The object of the corporation with the proposed plan of doing business must be fully set out. The purposes may include any or all of the purposes included in any one of the twenty-six classes, which may be described in general terms as follows: horticultural, literary, drainage, educational, eleemosynary, cemetery, fraternal, military, fire, shade trees, safe deposit and loan companies, hotels, real estate and rental companies, mining, health resorts, oil and gas wells, live-stock, trading corporations, commission merchants, title insurance abstract and loan, women's exchange, bond and money brokerage, medical and scientific research, storage, transfer, and scientific purposes (Laws of 1901, secs. 1-28). The amendment of 1903 permits incorporation for more than one of several designated classes of purposes (Laws of 1903, chap. 73).

*d. Incorporators.* — Names and places of residence of the incorporators must be set forth.

*e. Domiciliary Office.* — The principal place of business must be set forth, which by implication would seem to refer to the principal place of business within the State.

*f. Duration.* — The term of existence must not exceed fifty years.

*g. Corporate Seal.* — A demonstration of the corporate seal must be attached.

*h. Board of Directors.* — The manner of election or appointment of directors and officers who are to manage the business must be set forth.

*i. Number and Names of Directors.* — The number of directors, together with the names of those who shall manage the affairs for the first year, must appear. If desired, the date of the annual meeting may be set forth in the articles (sec. 4583; Laws of 1903, chaps. 37, 73, 128).

Under chap. 139, Laws of 1905, companies may be incorporated to carry on any one of the following named purposes, to wit: (a) Any kind of mining, manufacturing, mercantile, or mechanical business, or to furnish motive power to conduct such business; (b) to supply any city, etc., with water, light, heat, or power; (c) to own, construct, operate, and maintain stock yards and conduct and transact the business incident thereto; (d) to own, construct, maintain, and operate grain elevators and flour mills or both, and transact the business incident thereto, including the manufacture of flour, meal, and all grain and cereal products, and the buying and selling of grain cereals of all kinds and the manufactured products thereof. Also including the right to own and maintain motor power to conduct such business; (e) to buy and sell any and all kinds of merchandise in connection with the manufacture of such merchandise and for the sale of such merchandise when manufactured; (f) to buy and sell lands, buildings, and other structures thereon, and to erect dwellings and other buildings on lands leased or purchased.

Parties incorporating under the above must sign and acknowledge a certificate in writing stating the name adopted by the company, the object or objects of its promotion, which may include any or all of the purposes included in any one of the above enumerated branches of business, the amount of capital stock, the term of its existence, not to exceed fifty years, the number of directors and the names of those who shall manage the affairs of such company for the first year, and the name of the city or town in which its principal place of business is to be located. If desired, the incorporators may fix in the articles of association the date for holding the annual meeting

of the stockholders for the election of directors of the company at any time within one year from date of filing of articles of association, and when so fixed and stated the directors therein named and the successors of such directors as have resigned shall serve only for the period of time to said annual meeting so fixed and agreed upon in the articles of association. If the time of holding the annual meeting is not fixed in the articles of association, the annual meeting shall be held one year from the date of filing the same (sec. 5051 as amended by Laws of 1903, pages 97 and 147; Laws of 1905, p. 434). If preferred stock is to be issued, the certificate must set forth the amount thereof and the number of shares into which it is divided (secs. 5051, 5065; Laws of 1903, chap. 73; Laws of 1905, chap. 139).

*Bank v. Mead*, 159 Ind. 252; 64 N. E. 880.

**4. Statutory Powers.** — The statute fully enumerates the implied common law powers of corporations (secs. 3425, 4595 o, 4620). Bridge, gravel road, hydraulic, railway and street railway, and slack water companies are permitted to consolidate (secs. 4662, 4790, 4836, 5251, 5257, 5468 r, 5468 p, 5423; Laws of 1903, chaps. 73, 220). Among the special powers conferred by statute are the following: To issue preferred stock, to permit voting by proxy at stockholders' meetings, to forfeit stock for non-payment of assessments, to borrow on mortgage (secs. 3425, 3442, 5055, 5064-5066).

Most business corporations are expressly forbidden to become stockholders in other corporations, except that railroads may own stock in telegraph, telephone, union railway, and bridge companies under certain circumstances; manufacturing companies may also hold stock in other corporations upon the written consent of all parties interested (secs. 5059, 5087).

**5. Procuring the Charter.** — In the case of companies incorporated under the Session Act of March 9, 1901, the articles of association must be signed and acknowledged by each incorporator. They must first be presented to the Secretary of State for filing, and at the time of presenting such articles they must also present therewith a full written or printed statement of the proposed plan of doing business; but if, upon examination, the Secretary of State shall find the articles to be according to law, and the proposed plan of doing business not inconsistent with law, he shall, upon the payment of the fees prescribed by law, issue a certificate of incorporation. Thereafter the corporation must file and record a duplicate of these articles in the recorder's office of the county in which the principal place of business of such corporation is located. The law provides that such record or a certified copy thereof shall be conclusive evidence of the matters and things therein stated (sec. 4595 n). The corporation must at the time of filing these articles with the Secretary of State file a copy thereof in the office of the State Auditor, and must also file from time to time with the latter official copies of its constitution and by-laws, as and when adopted (sec. 4595 p; Laws of 1903, chap. 73).

In the case of companies incorporated under the Manufacturing and Mining Company Act (Laws of 1905, chap. 139), the articles must be likewise signed and acknowledged and filed and recorded in the office of the recorder of the county wherein the corporation is to have its principal place of business, and a duplicate thereof in the office of the Secretary of State (sec. 5051; see also sec. 3424; Laws of 1905, p. 434).

6. **Corporate Indebtedness.** — There is no statutory limitation upon the amount of corporate indebtedness. (As to borrowing on mortgage, see secs. 3442, 3444.)

7. **Organization Tax.** — Where the capital stock is \$10,000 or under, \$10; where the authorized capital stock is over \$10,000, the tax is one-tenth of one per cent thereof (sec. 7631).

8. **Filing and Recording Fees.** — For filing and recording articles of association not exceeding two hundred words, \$1, and 10 cents per hundred words for all in excess thereof. For issuing certificate of incorporation, 50 cents; for certified copy of articles of association, 50 cents for certificate and 10 cents for one hundred words per copy; for filing certificate of reduction of capital stock, \$5; for filing copy of decree of court changing corporate name, \$5; for filing certificate of extension of purposes or change of domicile, \$5; for filing other amendments, 20 cents per hundred words, to be in no case less than \$5. The foregoing fees are payable to the Secretary of State. The county recorder is authorized to collect 10 cents per hundred words for recording articles of association (secs. 6407, 7631).

9. **Commencing Business.** — Corporations may commence business as soon as the Secretary of State issues a certificate of incorporation and a duplicate of the articles of association are recorded in the recorder's office of the county wherein the principal place of business of the corporation is located (sec. 4595 n). Companies incorporated under the Manufacturing Act (chap. 38, Revised Statutes of 1901) must pay up their capital stock within eighteen months after incorporation (sec. 5061). As soon as the last payment is made the president and a majority of the directors must make a sworn statement setting forth this fact. Thereupon the certificate must be recorded in the office of the clerk of the circuit court of the county wherein the corporation's principal place of business is located (sec. 5062).

10. **Organization Meetings.** — In the absence of any statute providing otherwise, organization meetings must be held within the State. The incorporators should sign a written agreement fixing the time and place for holding the organization meeting. After a temporary secretary and chairman have been chosen, the corporation should proceed to the adoption of by-laws. Stockholders may vote by proxy. Immediately after the adjournment of the incorporators' meeting the board of directors named in the articles of incorporation should meet and organize by the election of the officers prescribed in the by-laws. The statutory officers are a president, secretary, and treasurer. The secretary and treasurer are required to give bonds with such sureties as shall be required by the by-laws and must be sworn to the faithful discharge of the duties which may be assigned to either of them. The same person may be elected to the office of secretary and treasurer. The law provides that when the steps necessary to organization have been completed, a statement thereof must be filed in the office of the clerk of the circuit court of the proper county; that said court at its next term thereafter shall, on proof of such organization, cause to be entered an order declaring the existence of such corporation. The law provides that such order shall be conclusive as to the fact of such existence from the date which said court may fix in the order (secs. 3423, 3427).

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State. It seems to be contemplated by the statute that directors' meetings should be held at the principal office within the State (secs. 3447, 3448, 5054, 5055; Laws of 1908, chap. 87).

**12. Directors' Qualifications and Liabilities. a. Qualifications. —**

There must be not less than three nor more than thirteen directors; cannot exceed eleven in case of manufacturing, mining, mechanical, and chemical companies. In the last-named class of companies, directors must be stockholders and residents of the United States. In other corporations there are no such requirements (secs. 3446-3448, 4595 r, 5054, 5055; Laws of 1908, chap. 37).

*Renn v. Company (Ind.)*, 73 N. E. 269.

**b. Liabilities. —** If any corporation reducing its capital stock shall fail to file a certified copy of the vote of the stockholders thereon within thirty days thereafter in the office of the clerk of the circuit court in which the corporation's original certificate was filed, and also a duplicate of the same in the office of the Secretary of State, the directors shall be jointly and severally liable for debts contracted after the said thirty days or before the record of such vote. Directors are also jointly and severally liable for all damages resulting in case any certificate, report, or public notice given as required by law shall be false in any material respect, or if they shall fail to give such notice or make such report, and any person shall be misled or deceived thereby. The directors are also jointly and severally liable for all debts contracted and for the declaration and payment of a dividend knowing the company to be insolvent, or knowing that such dividend would render it so, or if they violate any of the provisions of the act which shall thereby render the corporation insolvent (secs. 5063, 5073, 5075, 5076).

*Brown v. Clow*, 158 Ind. 403; 62 N. E. 1006; *A. C. I. Co.*, 156 Ind. 212; 59 N. E. 679; *Renn v. U. S. Cem. Co. (Ind.)*, 73 N. E. 269.

**13. Stockholders' Liabilities. —** The Constitution of Indiana (sec. 213) provides that every corporation other than banking shall be secured by such individual liability of the stockholders or other means as may be prescribed by law. In the case of corporations organized under the voluntary association act of 1901, there is no stockholders' liability other than that arising from the non-payment of subscriptions to the capital stock (secs. 3425, 3430). However, if any part of the capital stock shall be withdrawn or refunded to the stockholders before payment of the debts of the corporation, stockholders are then individually and severally liable for the payment of such debts. In the case of corporations organized under the Manufacturing Act (R. S. of 1901, chap. 38), stockholders therein are individually liable for all debts due to laborers, servants, apprentices, and employes for services rendered such corporations (sec. 5077).

**14. Stock Certificates. —** Every stockholder is entitled to have a stock certificate issued to him, under the seal of the corporation, signed by the treasurer. Stock in manufacturing companies cannot be transferred until it is paid up.

**15. Preferred Stock. —** Corporations organized under the Manufacturing Act (R. S. of 1901, chap. 38) are expressly authorized to issue preferred stock by providing therefor in the articles of association (sec. 5065). Preferred stock may be issued after incorporation to an aggregate amount, which must not at any time exceed double the amount of the common stock of the company in shares of not more than \$100 each. If such company desires to create and issue shares of preferred stock after incorporation, it may do so, at any regular annual or special meeting of its stockholders,

by the vote of the holders of three-fourths of its common stock, and such company may at any such meeting or any subsequent meeting of its stockholders, by a vote of the holders of a majority of its common stock, authorize and empower its board of directors to dispose of and issue such preferred stock upon such terms and conditions as said board of directors may deem best, or as such company may prescribe; and when so authorized the validity of the issuance and the disposition made of such preferred stock by said directors shall in all things be binding and conclusive upon such company. Within thirty days after the time such company has authorized the issuance of preferred stock as provided in this section it shall cause to be filed with the Secretary of State its certificate in writing, signed by its president and attested by its secretary, duly acknowledged, certifying that the issuance of preferred stock has been authorized by such company, the amount of such preferred stock, the number of shares into which it shall be divided, and the amount of each share (sec. 5066).

Such preferred stock may be in any amount, and it shall be subject to redemption at par at such times and upon such terms and conditions as shall be expressed in the certificates thereof, and the holders of such preferred stock shall be entitled to receive, and the said company shall be bound to pay thereon, such quarterly, semi-annual, or annual dividend as may be expressed in the certificates, not exceeding in all eight per cent, before any dividend shall be set aside or paid on the common stock of such company, and in no event shall the holders of such preferred stock be individually or personally liable for the debts or other liabilities of such company, but in case of insolvency or upon the dissolution of such company, such debts or other liabilities shall be paid in preference to such preferred stock. Such preferred stock, however, shall at all times have a priority in payment out of the assets of such corporation over the common stock thereof, for the full face value, together with all arrearages of interest or dividends due thereon (sec. 5067).

Such preferred stock shall not be voted at any meeting of such company, nor shall the holders thereof, as such, have any voice in the management of the affairs of such company, excepting, however, that such company shall not have authority to convey its real estate or mortgage any of its property without the written consent of the holders of a majority of the shares of such preferred stock; nor shall such company without such consent declare any dividend upon its common stock that will impair its capital. Such preferred stock shall not entitle the holders thereof to any interest in the assets of such company beyond the par or face value of such preferred stock, together with all arrearages of interest or dividends due thereon (sec. 5068).

When any such company has redeemed the preferred stock issued by it under the provisions of this act, its directors shall within thirty days thereafter cause to be filed with the Secretary of State their certificate in writing as directors of such corporation, duly acknowledged, certifying that such preferred stock has been redeemed; and in default thereof the directors of such company shall be jointly and severally liable for all debts contracted after said thirty days and before said certificate is filed (sec. 5069; see also secs. 5064, 5070, as amended by Laws of 1903, chap. 122).

**16. Payment of Capital Stock.** — The statute does not provide as to how the capital stock shall be paid in. In the absence of statutory prohibition, it may be paid in in money or money's worth (secs. 4595 q, 5080, 5062).

**17. Books.** — Corporations are required to keep at their office or place of business within the State a stock book open to inspection during business

hours to all stockholders and creditors, who may take extracts therefrom if they desire (secs. 3433, 3434).

18. **Office.** — Every corporation must have an office within the State (secs. 3433, 3446; Laws of 1903, chaps. 73, 128).

19. **Reports.** — In the case of companies incorporated under the Manufacturing Act (R. S. of 1901, chap. 38), annual reports are required. Such corporations shall annually within twenty days from the first day of January make a report, which it shall cause to be published in some newspaper printed in the county where its office is located, if any (otherwise in the county nearest thereto), which shall state the amount of capital, amount of assessments made and actually paid in, and amount of existing debts, which report shall be signed by the president and a majority of the directors and shall be verified by the oaths of the president and such directors and secretary (secs. 5071, 5072). All business corporations must by their president or other proper accounting officer between the 1st day of March and the 15th day of May of each year, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the actual value of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The value of all tangible property.

Seventh. The difference in value between all tangible property and the capital stock.

Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation (sec. 8491, as amended by Laws of 1903, p. 49).

*Stafford v. St. John (Ind.)*, 73 N. E. 596.

20. **Anti-Trust Statute.** — There is a statutory prohibition directed against trusts and combinations tending to lessen free competition in the importation, sale, or manufacture of various articles (secs. 3312 g, 3312 u).

21. **Statutory Grounds for Forfeiture of Charters.** — Charters may be forfeited either for violation of the anti-trust act, or for allowing a judgment to stand against the corporation for a period of one year without satisfying the same (secs. 3312 g, 3312 u, 3429, 3439, 3440).

22. **Extension of Corporate Existence.** — Companies incorporated under the Manufacturing Act (R. S. of 1901, chap. 38) may extend their corporate existence by a majority vote of the stockholders cast at any annual meeting, for a term not to exceed fifty years from the time of its organization.

23. **Annual License Tax.** — There is no annual license tax.

24. **Amendments.** — The capital stock of all corporations organized under the General Act may be increased by a majority vote of all issued and outstanding capital stock of said corporation at any annual meeting of the stockholders, provided that written or printed notice be given by the secretary of the association to its stockholders by depositing such notice in the mail at least ten days before such annual meeting addressed to their last-named places of residence (sec. 4595 q; Laws of 1903, chap. 37).

## DIGEST OF INCORPORATION ACTS. — INDIANA.

To change the corporate name requires the filing of a petition in the circuit court of the county in which the corporation has its principal place of business. The petition being filed the corporation shall give notice thereof by three weekly publications in some newspaper of general circulation printed in the county wherein its principal place of business is located thirty days prior to the first day of the term on which such petition shall be heard. Proof of such publication must be made and filed and a copy of such publication notice verified by the affidavit of a disinterested person and copy of the decree of the court, changing the name of the corporation, certified under the seal of said court by the clerk thereof, shall within ten days thereafter be filed with the Secretary of State (secs. 1012-1016; Laws of 1905, chap. 151).

In the case of companies organized under the Manufacturing Act (R. S. of 1901, chap. 38) amendments may be had in the following manner: Manufacturing or mining companies may increase their capital stock at any annual meeting or at any special meeting of the stockholders by calling a special meeting of the stockholders of the company for such purpose, and giving the stockholders not less than ten days' notice of the purpose for which the special meeting was called. The president and secretary of any such company in certifying to the Secretary of State the increase of capital stock voted at any such special meeting of the stockholders shall certify under oath that two-thirds of the stock of the company issued and outstanding voted in favor of such increase at the special meeting (sec. 5058 a, as amended by Laws of 1903, p. 97).

The capital stock may also be reduced by the vote of all the stockholders at any meeting called for that purpose. In such case a certified copy of the vote shall within thirty days thereafter be filed and recorded in the office of the clerk of the circuit court in which the original certificate was filed. Also, a duplicate of the same must be filed in the office of the Secretary of State (sec 5063).

Whenever all the stockholders of any such company shall execute and acknowledge a certificate in writing, showing the consent of all such stockholders to an extension and enlargement of the objects of the company, and shall file and have the same recorded in the same manner as in the case of original articles of association, such amendment shall take effect (sec. 5078).

**25. Dissolution.** — May voluntarily dissolve without recourse to the courts by compliance with the statutes (secs. 3429, 5052 a; Laws of 1903, chap. 152).

*State v. Trustees*, 5 Ind. 77.

**26. Foreign Corporations.** — Every company incorporated for purposes of gain under the laws of any other State, Territory, or country, now or hereafter doing business within this State, shall file in the office of the Secretary of State a certified copy of its articles of incorporation, or in case such a company is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly certified and authenticated by the proper authority; and the principal officer or agent in Indiana, of the said corporation shall make and forward to the Secretary of State with the articles or certificates above provided for, a statement duly sworn to of the proportion of the capital stock of said corporation which is represented by its property located and business transacted in the State of Indiana; and such corporation shall be required to pay into the office of the Secretary of State, upon the first ten thousand dollars (\$10,000) or under, of the proportion of its capital stock represented by its property and business in the State of Indiana twenty-five dollars (\$25),



and upon the proportion of its capital stock represented by its property and business in the State of Indiana, over and above \$10,000, incorporating taxes and fees equal to those required of similar corporations formed within and under the laws of this State (secs. 3453-3461, as amended by Laws of 1903, chap. 127, p. 273).

*Hockett v. State*, 105 Ind. 250; 5 N. E. 178; *Machine Co. v. Caldwell*, 54 Ind. 270; *Am. Insurance Co. v. Wellman*, 69 Ind. 413; *Singer Manufacturing Co. v. Brown*, 64 Ind. 548; *Brechbill v. Randall*, 102 Ind. 328; 1 N. E. 862; *P. B. L. & S. Ass'n v. Markley*, 27 Ind. Ap. 128; 60 N. E. 1013; *N. M. N. G. Co. v. Smith*, 27 Ind. Ap. 472; 61 N. E. 10; *S. S. & L. Ass'n v. Elbert*, 153 Ind. 198; 54 N. E. 753.

## INDIAN TERRITORY.

(See "Arkansas.")

**The Corporation Laws of Indian Territory.** — Are, by Act of Congress of February 18, 1901 (U. S. Stat. 1900-1901, chap. 379, p. 794), adopted from the laws of Arkansas as published in 1884 in Mansfield's Digest, which laws, to wit, sec. 504 and succeeding sections down to and including sec. 509, sec. 960, and succeeding sections down to and including sec. 1035, are by said act extended over and put in force in the Indian Territory, so far as applicable and not in conflict with previous congressional legislation. Said act of Congress also provides that in reading said Arkansas laws, read for the word "county" the words "judicial district;" for "county courts," the words "United States courts;" for "State," the words "Indian Territory;" for "Secretary of State," the words "clerk of the judicial district;" for "General Assembly," the words "Congress of the United States;" for "vest in the State," the words, "vest in the United States." The fees to be paid to the clerk of the judicial district or clerk of the United States Court of Appeals are by said act made the same as those paid under the Arkansas law to similar officers.

## IOWA.

(The references are to the Code of 1897, unless otherwise stated.)

### 1. Statutes under which Business Corporations may be incorporated.

— The Business Corporation Act of Iowa is found in the statutes of that State, Title IX, secs. 1607-1641 inclusive, as amended by the Session Laws of 1899, 1901, and 1903. There are special requirements, not hereinafter set out, as to banks, building associations, fidelity companies, insurance, railroad, telegraph, telephone, and water-power companies.

2. **Incorporators.** — Any number of persons may be incorporators. The law expressly provides that a single person may incorporate under the General Corporation Act. There are no residential requirements (secs. 1607, 1608).

3. **Articles of Incorporation.** — The act requires that before commencing business the incorporators must adopt articles of incorporation, but it does not point out specifically all of the contents of the same. The act does, however, prescribe the contents of the notice of incorporation, which is required to be published. The notice here referred to must contain:

(a) The name of the corporation and its principal place of business. Similarity of names is not forbidden.

(b) The general nature of the business to be transacted. There is no express authority for the issuance of a charter authorizing the transaction of more than one general line of business.

(c) The amount of the capital stock authorized, and the times and conditions on which it is to be paid in. The capital stock may be any amount. The par value of each share may be any amount.

(d) The time of the commencement and the termination of the corporation. This is limited to not more than twenty years in ordinary business corporations (sec. 1618).

(e) By what officers or persons its affairs shall be conducted and the times when and the manner in which they will be elected. A board of directors of any number of persons may be named.

(f) The highest amount of indebtedness to which it is at any time to subject itself. This must not exceed two-thirds of its capital stock. This limitation does not apply to risks of insurance companies, certain liabilities of banks, certain bonds or other railway or street railway securities, or to debentures or bonds secured by the actual transfer of certain real estate securities.

*Hener v. Carmichael*, 82 Iowa, 288; 47 N. W. R. 1034.

(g) Whether private property is to be exempt from corporate debts (secs. 1610-1613). While the law does not prescribe all that the articles shall contain, it is the universal custom to cover at least all of the matters required in the foregoing notice. (See sec. 1613; Laws of 1902, chap. 67.)

4. **Statutory Powers.** — The Iowa statutes merely enumerate the implied common law powers of corporations (sec. 1609). For the purpose of repairs, rebuilding, enlarging or to meet contingencies, or for the purpose of creating a sinking fund, the corporation may set apart a sum which it may loan and take proper security therefor (sec. 1630). Stock certificates cannot be issued without having endorsed on the face thereof the amount or portion paid thereon and whether such payment has been in money or property (sec. 1627; Laws of 1904, chap. 55).

*Calumet Paper Co. v. Company*, 96 Iowa, 147; 64 N. W. 782; *Traer v. Company* (Iowa), 99 N. W. 290; *McKee v. Company* (Iowa), 98 N. W. 609; *S. C. T. R. & W. Co. v. Trust Co.*, 82 Fed. 124.

5. **Procuring the Charter.** — The incorporators must sign and acknowledge the articles of incorporation. They must be recorded in the office of the county recorder of the county where the principal place of business is located. The articles bearing the endorsement of the recorder as to the time when the same were recorded and the book and page of such record must be forwarded to the Secretary of State and be by him recorded. The organization tax must be paid at the time of such recording. Within three months from the date of the certificate of incorporation a notice must be published once each week for four successive weeks in some newspaper as convenient as practicable to the principal place of business, which must contain the matters set out in reference to this notice in paragraph 3, *supra*. Proof of such publication by affidavit of the publishers of the newspaper in which it is made must be filed with the Secretary of State. Both the corporation and persons sued by the corporation are forbidden to set up want of legal organization on the part of the corporation as a defence (secs. 1610, 1613, 1636).

*First Nat. Bank v. Davies*, 43 Iowa, 424; *Heald v. Owen*, 79 Iowa, 23; 44 N. W. 210; *Berkson v. Anderson* (Iowa), 87 N. W. 402.

6. **Corporate Indebtedness.** — Corporate indebtedness cannot exceed two-thirds of the capital stock (sec. 1611), except in the cases indicated in sec. 3, subdivision "f," *supra*.

7. **Organization Tax.** — Up to \$10,000, \$25, and an additional fee of \$1 per thousand for all stock authorized beyond that amount (sec. 1610; Laws of 1902, chap. 66).

8. **Filing and Recording Fees.** — The payment of the organization tax entitled the corporation to a certificate of incorporation free of charge. The payment of the organization tax also includes the charge for filing articles of incorporation. The Secretary of State is entitled to charge 10 cents per hundred words for recording such articles. The charge for filing and recording amendments to articles of incorporation is a certificate fee of \$1 and the recording fee of 10 cents per hundred words. For issuing certified copy of articles of incorporation the charge is \$1 for certificate and 10 cents per hundred words for making copy. The legal rate for publishing articles of incorporation, averaging one thousand words in length, is about \$30. It varies, being based upon so many lines of brier type of a specified length. The newspapers will usually publish for twenty or even fifty per cent of the legal rate. The recording fees in local county office are 50 cents for the first four hundred words, and 10 cents per hundred words for the balance.

9. **Commencing Business.** — Corporations may commence business as soon as the articles of incorporation are filed and recorded in the office of the recorder of the county where the principal place of business is located and in the office of the Secretary of State, provided, further, that the publication of the notice required by law is thereafter made and proof thereof duly filed in the office of the Secretary of State. Business must be commenced within two years from the time the articles are filed in order to avoid forfeiture of its franchises (secs. 1614, 1628).

*Thornton v. Balcom*, 85 Iowa, 198; 52 N. W. 190; *Johnson v. Kessler*, 76 Iowa, 411; 41 N. W. 57.

10. **Organization Meetings.** — Ordinarily organization meetings are held within the State (sec. 1612). The statute reads as follows: "If the corporation transacts business in this State, the articles shall fix its principal place of business, which must be in this State, and in charge of an agent of the corporation, at which place it shall keep its stock and transfer books and hold its meetings" (Id.).

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings must ordinarily be held within the State. Directors' meetings may be held without the State if the by-laws so provide. (See sec. 1612, cited at length above; also Laws of 1904, chap. 55.)

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — Any number of persons may act as directors. There are no residential or other requirements.

*b. Liabilities.* — Directors are penally liable for unlawful diversion of corporate funds, for declaring illegal dividends, and for keeping false books of account. The payment by the directors of any dividend when the corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent or which diminishes the amount of its capital stock, renders the directors knowingly consenting thereto jointly and severally liable for all debts of the corporation then existing. If the indebtedness of any corporation shall exceed the amount of indebtedness permitted by law, the

directors knowingly consenting thereto shall be personally liable to the creditors of such for such excess (secs. 1621-1623).

*Frost Mfg. Co. v. Foster*, 76 Iowa, 535; 41 N. W. 212; *Miller v. Bradish*, 69 Iowa, 278; 28 N. W. 594.

**13. Stockholders' Liabilities.** — Failure to comply substantially with the requirements in relation to organization and publicity renders the individual property of stockholders liable for corporate debts (sec. 1616). They are also liable to creditors of the corporation for all unpaid instalments on stock owned by them or transferred by them for the purpose of defrauding creditors (sec. 1631). The receipt of illegal dividends by stockholders makes them liable to the amount of such dividend so received for all liabilities of the corporation then existing (sec. 1621). Intentional fraud and failure to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a misdemeanor, and shall subject those guilty thereof to fine or imprisonment or both at the discretion of the court. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud (sec. 1620).

*Warfield v. Company*, 72 Iowa, 666; 34 N. W. 467; *Chisholm v. Forny*, 65 Iowa, 333; 21 N. W. 664.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by such officers as may be designated in the by-laws. No certificate can be issued without having indorsed on the face thereof what amount of the par value has been paid to the corporation issuing the same and whether such payment has been in money or property (sec. 1627; Laws of 1900, chap. 57).

**15. Preferred Stock.** — The statute does not expressly authorize the issuance of preferred stock by domestic corporations. They undoubtedly have the power to issue such stock.

**16. Payment of Capital Stock.** — Stock may be issued for money or property (sec. 1627). A statement of the amount of capital stock as subscribed, the amount of capital stock actually paid in, and the amount of corporate indebtedness must be posted in the principal place of business and be subject to public inspection (sec. 1625).

*Singer v. Given*, 61 Iowa, 93; 15 N. W. 858.

**17. Books.** — Transfer books showing the name of the person by whom and to whom stock is transferred, the number of shares, and the date of the transfer must be kept within the State at the principal office of the corporation (secs. 1612, 1626). They are open to public inspection.

**18. Office and Agent.** — Every corporation must maintain a principal office within the State, with an agent in charge thereof, in which must be posted a copy of the by-laws, a statement of the amount of capital stock subscribed, the amount of capital stock actually paid in, and the amount of indebtedness, all for public inspection (secs. 1612, 1624, 1626).

**19. Reports.** — No reports are required to be published. The corporation must annually in January file with the Secretary of State a list of its officers and directors and any change in the location of its place of business made by a vote of the stockholders (sec. 1612).

**20. Anti-Trust Statute.** — Iowa has an elaborate anti-trust statute prohibiting certain pools, trusts, and conspiracies (Code, secs. 5060-5067).

## DIGEST OF INCORPORATION ACTS. — IOWA.

**21. Statutory Grounds for Forfeiture of Charter.** — Intentional fraud in failing to comply substantially with the articles of incorporation, or deceiving the public in relation to the corporation's means and liabilities, or a diversion of funds which results in the insolvency of the corporation, works a forfeiture of the corporate privileges to be enforced as directed by law. Failure to use the charter for two successive years is a ground for forfeiture of the charter. Charter may also be forfeited for violation of the anti-trust act (secs. 1622, 1628; see also secs. 4313-4335, 5065).

**22. Extension of Corporate Existence.** — Corporate existence may be extended for an additional period of twenty years if desired (sec. 1618; Laws of 1900, chap. 56; Laws of 1902, chap. 66; Laws of 1904, chap. 2).

**23. Annual License Tax.** — There is no annual license tax.

**24. Amendments.** — Changes in any of the provisions of the articles may be made at any annual meeting of the stockholders or a special meeting called for that purpose. Amendments are valid only when recorded, approved, and published as original articles are required to be. The amendments, however, need only be signed and acknowledged by such officers of the corporation as may be designated to perform such act by the stockholders.

**25. Dissolution.** — May be dissolved prior to the period fixed in the articles of incorporation by unanimous consent of the stockholders, or in accordance with the provisions of its articles, and notice thereof must be given in the same manner and for the same time as is required for its organization. Courts of equity have power to dissolve or close up the business (secs. 1617, 1640).

**26. Foreign Corporations.** — Every foreign corporation, other than mercantile or manufacturing corporations, shall file with the Secretary of State a certified copy of its articles of incorporation, accompanied by a resolution of the board of directors or stockholders authorizing the filing thereof, and also appointing an agent upon whom service or process may be had within the State, and shall pay the same fee required for the organization of corporations with a similar capital within the State (secs. 1637-1639, 2889-2990; Laws of 1904, chap. 54).

*Ware Cattle Co. v. Anderson*, 107 Iowa, 231; 77 N. W. 1026; *Scottish Union, etc. Co. v. Herriott*, 109 Iowa, 606; 80 N. W. 665; *State v. Company*, 91 Iowa, 517; 60 N. W. 121.

## KANSAS.

(The references stated below are to the General Statutes of Kansas, 1901, unless otherwise stated).

**1. Statute under which Business Corporations may incorporate.** — The Business Corporation Act of Kansas is found in the General Statutes of that State, 1901, and in the acts amendatory thereof as found in the Session Laws of 1903 and 1905. Special acts are provided for banks.

**2. Incorporators.** — There must be at least five incorporators, three of whom must be citizens of the State (secs. 1248, 1256).

**3. Contents of Application for Charter.** — An application must be filed by the incorporators with the charter board, setting forth:

*a. Name.* — There can be only one corporation of the same name. This must indicate the nature of the business intended to be carried on. It must begin with the word "the" and end with the word "corporation," "com-

## DIGEST OF INCORPORATION ACTS. — KANSAS.

pany," "association," or "society," and must indicate by its corporate name the business to be carried on by said corporation.

*b. Domiciliary Office.* — The place where its principal office or place of business is to be located within the State.

*c. Duration.* — Not to exceed twenty years.

*d. Purposes.* — The full nature and character of the business in which it proposes to engage. The statute enumerates forty classes of corporations which may be organized under the General Act (sec. 1249). These embrace every line of business with the exception of banking. The statute further provides that in addition to these forty classes corporations may be formed for the transaction of any manufacturing, mining, mechanical, chemical, mercantile, and agricultural implements and produce business, either severally or all combined (sec. 1250). Permission is also granted to incorporate for the purpose of selling, hiring, or leasing engines, cars, and rolling stock for railroads to railroad companies, and also for the construction and maintenance of telephone lines.

"The statute of this State," observes the Secretary of State, "provides that the name of the corporation shall indicate the character of the business in which it is proposed to engage, and it is the practice of the charter board to limit the operation of the corporation to a single line of business, except as its engagement in other business may be incidental to or necessary to the successful operation of such business. Grouping of this character is authorized by sec. 1250 of the General Statutes of 1901."

*Parkinson Sugar Co. v. Bank*, 60 Kan. 474 ; 57 Pac. 126.

*e. Incorporators.* — Names and addresses of the incorporators.

*f. Capital Stock.* — This may be any amount. The par value of shares may be any amount. (See also Laws of 1904, chap. 157.)

**4. Statutory Powers.** — In addition to a statutory enumeration of common law powers the act confers the following additional powers: To authorize voting by proxy, to permit cumulative voting, to forfeit stock for non-payment of assessments, to issue preferred stock, to issue bonds (secs. 1248, 1266, 1269).

**5. Procuring the Charter.** — The petition for a charter must be presented to the charter board, composed of the Attorney-General, the Secretary of State, and the State Bank Commissioner. The application must be accompanied by the payment of \$25, known as the "application fee." The board is required to make an investigation of each application, and if satisfied therewith it shall be granted, and the secretary of the board issues his certificate setting forth the fact that the persons named in the application have been authorized by the charter board to form a private corporation. This authorization is in fact merely a legal authority to organize the corporation. Thereupon the charter must be prepared, containing: (1) Name of the corporation. (2) Purposes thereof. (3) Location of principal place of business within the State. (4) Duration of corporate existence. (5) Number of directors, names and residences of those appointed for the first year. (6) Amount of capital stock, and the number of shares into which it is divided. (7) Names and residence of the stockholders and the number of shares held by each. Provision may be made also to the effect that no stockholder shall ever own, or vote as the owner or by proxy or both, to exceed a certain minority part of the capital stock of such corporation, and such provision shall be binding upon and enforced against all stockholders of such corporation (Laws of 1906,

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chap. 15). This charter must be subscribed and acknowledged by at least five incorporators. Before the charter issues it must be filed with the Secretary of State, and the organization tax provided by law must be paid to the State Treasurer. Upon the payment of the State fees the Secretary of State issues a certified copy of the charter to the incorporators. This copy is by statute made evidence of the creation of the corporation (secs. 1253, 1256, 1257, 1259-1261, 1264).

*Ryland v. Hollinger*, 117 Fed. 216; 54 C. C. A. 248.

6. **Corporate Indebtedness.** — Must not exceed amount of authorized capital stock (sec. 1274).

7. **Organization Tax.** — The application must be accompanied by a fee of \$25. Before the charter is filed applicant must pay to the State Treasurer a charter fee of one-tenth of one per cent of its authorized capital on the first \$100,000 of its capital, or any part thereof; upon the next \$400,000 or part thereof, one-twentieth of one per cent; and for each million dollars or major part thereof above the sum of \$500,000, \$200 (secs. 1261, 1264).

8. **Filing and Recording Fees.** — Fee to the charter board is \$25; to the Secretary of State for filing and recording charter, \$2.50, not exceeding ten folios, and an additional fee of 25 cents for each folio in excess of ten. The payment of this fee entitles the corporation to a certified copy of the charter (sec. 1264).

9. **Commencing Business.** — Corporations may commence business as soon as their petition has been favorably acted upon by the charter board, the application fee paid, the charter properly filed with the Secretary of State, the organization tax and filing fees paid, and an affidavit filed with the Secretary of State, made by the president or secretary setting forth that not less than twenty per cent of the authorized capital has been paid in cash. Corporations must commence business within one year after filing the charter (secs. 1257, 1258, 1275, 1311).

10. **Organization Meeting.** — Must be held within the State in the absence of any statute providing otherwise. (See sec. 1277.)

11. **Meetings of Stockholders and Directors.** — All meetings of stockholders must be held within the State. Directors' meetings may be held without the State if the by-laws so provide (secs. 1276, 1288, 1293).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three and not more than twenty-four directors. Three of these must be residents of the State. All directors must be stockholders. Cumulative voting for directors is permitted. The power to adopt by-laws is delegated to the directors, but subject to amendment by stockholders if they choose. An oath of office is required (secs. 1269, 1271, 1276-1279, 1282, 1288, 1293).

*b. Liabilities.* — Directors are jointly and severally liable for knowingly declaring or paying any dividends when the corporation is insolvent, or any dividend the payment of which would render it insolvent. They may avoid this liability by filing their objections in writing with the secretary of the corporation (sec. 1292).

13. **Stockholders' Liabilities.** — The legislature of 1903 passed an act repealing statutes imposing a double liability on stockholders. The constitutionality of this act is questioned in some quarters, but the supreme court has not yet passed upon it. In any event stockholders are liable for unpaid stock subscriptions (sec. 1291). Under chap. 542 of the Session Laws of 1905,

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an amendment to the constitution is to be submitted to the voters at the next general election, amending Art. XII, sec. 2 of the constitution, so as to read as follows: Dues from every corporation shall be secured by the individual liability of the stockholders to the amount of stock owned by each stockholder and such other means as shall be provided by law.

*Musgrave v. Association*, 5 Kan. Ap. 393; 49 Pac. 338; *Munson v. Warren*, 63 Kan. 182; 65 Pac. 222.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by such officers as may be designated in the by-laws.

**15. Preferred Stock.** — Preferred stock may be issued by insertion of a provision therefor in the charter, or by the unanimous consent of all the common stockholders of the corporation after incorporation (sec. 1287).

**16. Payment of Capital Stock.** — The capital stock is payable in such amounts and in such manner as may be required by the by-laws under direction of the board of directors (secs. 1285, 1289).

**17. Books.** — A record must be kept of all stock subscribed and transferred and all business transactions. Such records must be open at all times to the inspection of stockholders (sec. 1293).

**18. Office.** — Every corporation must maintain an office within the State. The law provides that the office of the treasurer must be within the State (sec. 1293).

**19. Reports.** — Every corporation, except banking, insurance, and railroad corporations, shall file annually with the Secretary of State, on or before August 1st, a statement of condition of such corporation on the 30th of June preceding. Such statement shall set forth authorized capital stock, paid up capital stock, par value and market value of shares of stock, statement of assets and liabilities, list of stockholders, with the post-office addresses of each, and number of shares held and paid for by each, names and post-office addresses of officers, trustees, or directors and manager elected for ensuing year, and a certificate of the time and manner in which election was held. Fee for filing report is \$1 (sec. 1283). It is the duty of the president and secretary of such corporation to file with the Secretary of State statements of every change of ownership of stock in the corporation, together with a statement of the number of shares and par value thereof, the name and address of the new stockholders, and amount paid on such stock (sec. 1283).

**20. Anti-Trust Statute.** — Kansas has an elaborate anti-trust statute providing for the prohibition of certain kinds of pools, trusts, or conspiracies (secs. 2427, 2431, 7864-7874; Laws of 1905, chaps. 2, 157).

**21. Statutory Grounds for Forfeiture of Charter.** — The charter board is authorized by law to declare a charter void for failure to furnish such information in the way of annual reports or otherwise, as may be required by the Secretary of State. The charter may be forfeited for illegal use or abuse of corporate powers, or for entering illegal trusts and combinations, or for failure to commence business within one year from filing of charter, or for failure to maintain its domiciliary office and resident directors (secs. 1283, 1294; Laws of 1905, chaps. 2, 315).

**22. Extension of Corporate Existence.** — Corporate existence may be extended for successive periods of twenty years, by filing with the Secretary of State at any time certificate of its intention to so extend its time of existence, signed and duly acknowledged by the president and secretary after the



same has been authorized by its board of directors and approved by either two-thirds of its stockholders in writing or by a two-thirds vote of its stockholders present at any meeting duly called for that purpose (secs. 1284, 1304, 1305).

23. **Annual License Tax.** — There is no annual license tax.

24. **Amendments.** — Sec. 1254 of the General Statutes of 1901 contains the general provision that any corporation organized under the act may within the limits thereof amend its charter in any of the parts thereof; but in any such case said charter shall be so amended only when authorized by a two-thirds vote of the stockholders of said corporation at a meeting held in conformity with the by-laws thereof; and as so amended such charter shall be subscribed by the directors and acknowledged by not less than three thereof, who shall be citizens of the State, and thereupon filed and recorded in the same manner and with like effect as now provided in the case of original charters.

To change the name of the corporation or the number of directors there must be filed with the Secretary of State an affidavit setting forth the name adopted or the number of directors fixed, together with the date at which said name or number of directors was voted by the stockholders of said corporation. If the name be changed, notice thereof shall be made and published for six successive weeks in some newspaper printed and published in the county in which the principal office of the corporation is located (secs. 1271, 1272).

To increase the capital stock (limited to three times the amount of its authorized capital) a vote of the stockholders in conformity with the by-laws thereof is necessary, or in lieu thereof such corporation may increase its capital stock to any amount by a vote of the stockholders in conformity with the by-laws of the corporation by actual *bona fide* additional paid up cash subscription thereto, equal to the amount of such increase; if a majority of the stockholders shall vote for such increase, the same may be increased by the board of directors of the corporation, and thereupon the date and amount of such increase shall be certified to the Secretary of State by the directors, and from the time such certificate is filed the increase of stock shall become a part of the capital thereof. Such certificate shall be filed and recorded in the same manner as the original charter. Under the decisions of the court, directors cannot change the number or par value of stock (secs. 1265, 1273). *Tschumi v. Hills*, 6 Kan. Ap. 549.

In order to decrease the capital stock the president of the corporation, upon request of the holders of one-fourth of stock, or the board of directors, without such request, may call a meeting of the stockholders for the purpose of passing upon the question. Notice of such meeting shall be given in the manner and time provided by the by-laws, and in the absence of such a provision ten days' notice thereof shall be given to the stockholders personally or by mail. If at such meeting not less than two-thirds of the capital stock be voted in favor of such decrease, a certificate of such decrease under the corporate seal, signed by the president and secretary and acknowledged by the president, shall be filed in the office of the secretary, and upon the filing of the same the charter of such corporation shall be amended accordingly (Laws of 1903, chap. 151).

An alternative method of decreasing the capital stock is provided for by permitting the retiring or reducing of any class of stock, or by the surrender by every stockholder of his shares and the issuance to him in lieu thereof of a

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decreased number of shares, or by reducing the number of shares. If this method is adopted, a certificate of decrease must be published once each week for three successive weeks in some newspaper published in the county where the principal office of the corporation is located, the first publication to be made within fifteen days after the filing of such certificate with the Secretary of State. In default of such publication the directors of the corporation are jointly and severally liable for all debts of the corporation contracted after the filing of such certificate with the Secretary of State before the publication of the same.

25. **Dissolution.** — May be dissolved on application to the courts (secs. 1310-1315).

*Brigham v. Nathan*, 62 Kan. 243; 62 Pac. 319; *Jones v. Edson*, 10 Kan. Ap. 110; 62 Pac. 249.

26. **Foreign Corporations.** — Foreign corporations must apply to the charter board for permission to engage in business in the State, setting forth certified copy of its charter; place where its principal office is located; nature and character of the business in which it proposes to engage; names and addresses of the trustees, officers or directors, and stockholders of the corporation; a statement of the assets and liabilities. This statement must be subscribed and sworn to by the president, secretary, and managing officer, and be accompanied by the charter fee of \$25, and also by written assent that actions may be commenced against the corporation by service of process upon the Secretary of State. This stipulation must be executed by the president and secretary of the company, authenticated by its seal, and accompanied by a certified copy of the resolution of the board of directors authorizing same. Such corporations shall also pay the same fees on their capital stock as required of domestic corporations. During the month of February of each year foreign corporations must file with the Secretary of State a statement of the condition of such corporation at the close of business on the day of last annual statement made by such corporation for its own use, and within one hundred and twenty-five days preceding filing of such statement or, if no such previous statement has been made, the statement so filed shall show condition of the company at close of business on the 31st day of December preceding. This statement must show name; location of principal place of business within the State and without the State; names and residences of officers and directors; amount of authorized capital stock and par value of shares; amount of capital stock subscribed, and amount and general nature of its sources and liabilities. This report must be signed and sworn to by the president or general manager and by the secretary (Laws of 1901, chap. 195, secs. 2, 3, 4; see generally Laws of 1903, chaps. 150, 153).

*State v. Topeka Water Co.*, 61 Kan. 547; 60 Pac. 337; *Alliance Trust Co. v. Wilson*, 9 Kan. Ap. 891; 59 Pac. 177; *S. C. L. S. C. Co. v. Haston* (Kan.), 75 Pac. 1028; *State v. American Book Co.* (Kan.), 76 Pac. 11; *J. D. P. Co. v. Wyland* (Kan.), 76 Pac. 863.

## KENTUCKY.

(The references cited below are to the Revised Statutes of 1894, unless otherwise stated.)

1. **Statute under which Business Corporations may incorporate.** — The Business Corporation Act of Kentucky is found in the Revised Statutes, 1894, secs. 538-576, and acts amendatory thereof. Under it parties may in-

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corporate for transaction of any lawful business. There are special provisions applicable to collection agencies, banks, bankers, bridge companies, building and loan associations, insurance, railroad, and real estate corporations (sec. 538).

*Sayre v. Ass'n*, 62 Ky. 143.

2. **Incorporators.** — Any number of persons not less than three may be incorporators. There are no residential requirements (sec. 538).

*Louisville Bank Co. v. Eisenman*, 94 Ky. 83; 31 S. W. 531.

3. **Contents of the Certificate of Incorporation.** — The articles must specify :

a. *Name.* — Similarity of names as to existing domestic corporations is forbidden. The word "incorporated" must always follow the name adopted (sec. 576).

b. *Domiciliary Office.* — Location within the State of the principal office or place of business of the corporation.

c. *Purposes.* — The nature of the business, the objects or purposes proposed to be carried on, promoted, or transacted. This permits of incorporation for more than one purpose.

d. *Capital Stock.* — The amount of capital stock and the number of shares into which the same is divided. The capital stock may be any amount. The par value of shares may be any amount.

e. *Subscribers to Capital Stock.* — The names and places of residence of the stockholders and the number of shares subscribed by each.

f. *Duration.* — The time when the corporate existence commences and the duration of the same. This may be unlimited.

g. *Directors and Officers.* — A designation of the officers or persons who are to conduct the affairs of the corporation and the time and place at which they are to be elected. There must be at least three directors.

h. *Corporate Indebtedness.* — The highest amount of indebtedness or liability which the corporation may at any time incur. This may be unlimited.

i. *Stockholders' Liability.* — Statement as to whether the private property of the stockholders shall be subject to the payment of corporate debts, and if so, to what extent (sec. 539).

*Louis Bletz & Co. v. Bank*, 21 Ky. Law Rep. 1554; 55 S. W. 697; *Thwealf v. Bank*, 81 Ky. 1; 4 Ky. Law Rep. 557.

4. **Statutory Powers.** — In addition to the enumeration of the common law powers of corporations, the statute gives the corporation power to remove officers, to define their duties, and to require from any of them a bond for the faithful performance of their duties, and gives boards of directors power to adopt by-laws. The statute forbids the purchase by the corporation of its own capital stock except to prevent loss upon debts previously contracted, and the stock so purchased shall in no case be held for more than one year. It also permits corporations to consolidate and to issue preferred stock. Also a lien on stock for debts due the corporation from stockholders may be enforced by the corporation. Corporations cannot hold any real estate except as may be necessary for carrying on their legitimate business for a longer period than five years. Power to vote by proxy, to forfeit stock for non-payment of assessment, to permit cumulative voting, and to classify directors is given (secs. 542, 543, 551, 555, 564, 567; Laws of 1902, chap. 58; Laws of 1905, chap. 105).

*German Nat. Bank v. K. T. Co.*, 19 Ky. Law Rep. 361; 40 S. W. 458; *C. G. L. Co. v. City of Covington*, 22 Ky. Law Rep. 796; 58 S. W. 805; *Phillips v. Winslow*, 57

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Ky. 431; *L. G. Co. v. Kaufman*, 105 Ky. 131; 48 S. W. 434; *Jefferson v. Burford*, 13 Ky. Law Rep. 650; 17 S. W. 855; *Price v. Company*, 17 Ky. Law Rep. 865; 32 S. W. 267; *Shaw v. Company*, 12 Ky. Law Rep. 799; 15 S. W. 245.

5. **Corporate Indebtedness.** — There is no limit to the amount of indebtedness which a corporation may incur. No bonds can be issued except for equivalent in money paid, labor done, or property actually received and applied to the purposes for which the corporation was created (sec. 568; Laws of 1905, chap. 105).

6. **Procuring the Charter.** — The articles of incorporation must be signed and acknowledged by each of the incorporators. They must then be recorded in the county clerk's office of the county in which the principal place of business is to be located, and a copy thereof filed and recorded in the office of the Secretary of State (secs. 540, 542, 570). Collateral inquiry into the legality of corporate existence is forbidden (sec. 566).

*Walton v. Riley*, 85 Ky. 413; 3 S. W. 605; *P. & G. T. Co. v. Bobb*, 88 Ky. 226; 10 S. W. 794; *Sims v. Commonwealth*, 71 S. W. 929; 24 Ky. Law Rep. 1591; *Wight v. Company*, 55 Ky. 4; *Gill v. Company*, 70 Ky. 635.

7. **Organization Tax.** — An organization tax amounting to one-tenth of one per cent on the amount of the authorized capital stock is exacted (Laws of 1902, chap. 128, Art. XI. sub. I, sec. 1).

8. **Filing and Recording Fees.** — Recording fees in the office of the Secretary of State, 50 cents per typewritten page. No charge is made for issuing the certificate of incorporation. The fee for certified copy of certificate of incorporation is 25 cents per page for copying and \$2 for certificate under seal. For recording appointment of agent upon whom process may be served in the case of foreign corporations a fee of 50 cents is charged. Recording fees in local county office for articles averaging one thousand words in length is \$3, which includes cost of certified copy for filing in the office of the Secretary of State.

9. **Commencing Business.** — Corporations in order to transact any business with persons other than the stockholders must procure subscriptions in good faith for at least fifty per cent of the authorized capital stock. When this has been done, the corporation may commence the transaction of its business. Such business must be commenced within two years after organization (secs. 543, 565). Before commencing business the corporation must file in the office of the Secretary of State a statement signed by its president or secretary, giving the location of its office or offices within the State and the name or names of its agent upon whom process may be served (sec. 571).

10. **Organization Meeting.** — Organization meeting must be held within the State in the absence of any statute providing otherwise.

11. **Meetings of Stockholders and Directors.** — All meetings of stockholders must be held within the State. Directors' meetings may be held without the State if the by-laws so provide (sec. 551).

*P. C. Co. v. Finley*, 98 Ky. 405; 33 S. W. 188; *Schmidt v. Mitchell*, 101 Ky. 370; 41 S. W. 929; *Vaught v. Company*, 49 S. W. 426; 20 Ky. Law Rep. 1471.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors, each of whom must own in his own right not less than three shares of stock. There are no residential requirements. Directors may be classified if desired. They must also adopt by-laws (secs. 542, 551).

**b. Liabilities.** — Directors are jointly and severally liable for the declaration and payment of dividends when the corporation is insolvent or the declaration or payment of which renders it insolvent or which diminishes the amount of its capital stock. They are also jointly and severally liable for knowingly causing to be published or given out any false statement or report of the condition of the corporate business, or for failing or refusing to comply with or for violation of any provision of the Business Corporation Act applicable to them (secs. 548-550 inclusive).

*Prewitt v. Trimble*, 92 Ky. 176; 17 S. W. 356; *Kruse v. Humpert*, 21 Ky. Law Rep. 985; 53 S. W. 657; *Dudley v. Price*, 49 Ky. 84; *O'Neal v. Company* (Ky.), 80 S. W. 451; 25 Ky. Law Rep. 2279; *Schmidt v. Mitchell*, 98 Ky. 218; 32 S. W. 599; 33 S. W. 408; *C. C. Co. v. Bate*, 96 Ky. 356; 26 S. W. 538; *Dietrich v. Rottenberger*, 25 Ky. Law Rep. 338; 75 S. W. 271; *Cornwall v. Eastham*, 65 Ky. 561; *Brannin v. Loring*, 82 Ky. 370; 6 Ky. Law Rep. 328; *Guentter v. Company*, 107 Ky. 44; 52 S. W. 931.

**13. Stockholders' Liabilities.** — Stockholders in ordinary business corporations are liable only for their unpaid stock subscriptions (Laws of 1902, chap. 10).

*Cincinnati Coopers Co. v. Bate*, 16 Ky. Law Rep. 626; 26 S. W. 538; *Senn v. Levy*, 23 Ky. Law Rep. 662, 1331; 63 S. W. 776.

**14. Stock Certificates.** — Every shareholder is entitled to have a stock certificate issued to him signed by such officers as may be designated in the by-laws.

**15. Preferred Stock.** — Any corporation organized under this act may divide its shares into classes, such as preferred, common, and deferred shares, or as may be otherwise designated, and it may give to each of the several classes such priority of right in the payment of dividends and in the redemption of the shares as may be prescribed in the rules and regulations adopted by the shareholders. But no such preferred stock shall be issued except for cash or its equivalent, nor for less than the par value of the shares, and the holders thereof shall be entitled to receive quarterly, semi-annual, or annual dividends thereon at such rate as may be prescribed in its issue, payable before any dividends shall be declared on the common stock, and it shall be stated in the certificates representing the preferred and common stock respectively. On the dissolution of the company, voluntary or otherwise, the holders of such preferred stock shall be entitled to have their shares redeemed at par before any distribution of any part of the assets of the company shall be made to the holders of the common stock. After incorporation, the corporation may, by a vote of two-thirds in amount of the outstanding capital stock cast at a special meeting of the stockholders called for that purpose and of which notice shall have been given as provided in the by-laws of the company at least twenty days before the date of such meeting, or at the annual meeting of the stockholders or by the written consent of the holders of not less than two-thirds in amount of the capital stock, distribute or convert its outstanding capital stock into preferred and common stock in such proportion as may be desired, provided that all holders of stock at the time of distribution shall be entitled to the same *pro rata* proportion of such preferred and common stock. Preferred stock may be made convertible into the bonds of the company if desired (secs. 564, 771; Laws of 1904, chap. 105).

**16. Payment of Capital Stock.** — Stock can be issued only for money paid, labor done, or property actually received and applied to the purposes for

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which the corporation was created. No labor nor property shall be received in payment of stock at a greater value than the market price at the time the labor was done or the property delivered. All fictitious increases of stock shall be void (sec. 568).

*Mercer v. Company*, 18 Ky. L. R. 985; 38 S. W. 841; *J. R. P. L. Co. v. Cooke*, 103 Ky. 96; 44 S. W. 391; *Bush v. Robinson*, 95 Ky. 492; 26 S. W. 178.

17. **Books.** — A book containing the name and post-office address, the number of shares held by each stockholder, and the time when such person became a stockholder must be kept. Also a stock transfer book must be kept at the principal office of the corporation within the State (sec. 546). This is open to the inspection of stockholders and creditors.

18. **Office and Agent.** — Every corporation must maintain an office within the State and have an authorized agent therein upon whom process may be served. The designation of such agent must be filed in the office of the Secretary of State by certificate signed by the president or secretary giving location of the office of the company in the State, and the name of the agent upon whom process may be served (sec. 571).

*Standard Oil Co. v. Commonwealth*, 23 Ky. Law Rep. 302; 62 S. W. 897.

19. **Reports.** — No annual reports are required.

20. **Anti-Trust Statute.** — There is an anti-trust statute in force directed against illegal combinations, pools, and trusts (Cons., sec. 198; R. S., secs. 3915-3921 inclusive).

21. **Annual License Tax.** — There is no annual license tax.

22. **Extension of Corporate Existence.** — There is no statutory provision therefor.

23. **Statutory Grounds for Forfeiture of Charter.** — Every charter is liable to be forfeited by suit brought for that purpose by the State for failing to comply with any requirement or provision of its charter or for any abuse or misuse of its corporate powers, and shall have thereby become detrimental to the internal welfare of the State. The charter is liable to forfeiture for failure to commence business within two years after its organization, for entering into illegal trusts, combinations, and pools, or for giving money to fix the result of any election (secs. 565, 569).

*S. E. Co. v. Commonwealth*, 21 Ky. Law Rep. 1556; 55 S. W. 684.

24. **Amendments.** — By consent in writing of owners of two-thirds of capital stock, the articles of incorporation may be amended for any purpose. Said alteration or amendment to be signed and acknowledged by the directors, or a majority of them, and filed and recorded as articles of incorporation are required to be filed in the first instance (secs. 559, 574).

*Senn v. Levy*, 111 Ky. 318; 63 S. W. 776; *Cin. Coop. Co. v. Bate*, 96 Ky. 356; 26 S. W. 538; 14 Ky. Law Rep. 469.

25. **Dissolution.** — Any corporation may, by consent in writing of the owners of a majority of its stock, close its business and wind up its affairs (sec. 561).

*Williams v. Nall*, 108 Ky. 21; 55 S. W. 706; *L. G. Co. v. Kaufman*, 105 Ky. 131; 48 S. W. 434; *G. T. S. Co. v. Taylor & Sons*, 113 Ky. 709; 68 S. W. 862; *Bank v. Trimble*, 45 Ky. 599; *E. B. & L. Ass'n v. Company*, 113 Ky. 246; 68 S. W. 21.

26. **Foreign Corporations.** — The only requirements necessary to be complied with in order to transact business within the State on the part of foreign corporations is the designation of an agent upon whom process may be served, and a declaration of the name of such agent and the domicile

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of the corporation, by filing same with the Secretary of State (Act 1890, p. 188; see also Cons., sec. 202; Laws of 1904, chap. 69).

*Commonwealth v. Read Phosphate Co.*, 23 Ky. Law Rep. 2284; 67 S. W. 45; *Aultman Taylor Co. v. Mead*, 22 Ky. Law Rep. 1189; 60 S. W. 294; *Phoenix Ins. Co. v. Commonwealth*, 68 Ky. 68; *Commonwealth v. P. & O. Co.*, 26 Ky. Law Rep. 58; 80 S. W. 791; *C. T. & T. Co. v. L. H. L. Co.*, 24 Ky. Law Rep. 1676; 73 S. W. 4.

## LOUISIANA.

(The references cited below are to Wolff's Revised Statutes of 1904, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Louisiana is found in the Revised Statutes of that State, 1904, secs. 683-741; see also Civ. Code of Louisiana, 1870, secs. 427-447. (See Laws of 1902, Acts 53, 154; Laws of 1904, Act 78.) Special acts are provided for banking, building and loan, canal, insurance, railway, safe deposit, and trust, street railway, surety, telegraph, and telephone companies. Incorporation for stock-jobbing business is expressly forbidden (sec. 683; Laws of 1888, Act 36). At the present time practically all business corporations formed within the State are incorporated under Act No. 78 of the Louisiana Session Laws of 1904. This act permits incorporation for any purpose except that of insurance and banking, or the carrying on of any business entitling the corporation to exercise the right of eminent domain.

2. **Incorporators.** — Under Act 78, Laws of 1904, but three incorporators are required. There are no residential requirements. (See, however, sec. 683; Laws of 1882, Act 111; Laws of 1902, Act 154.)

*Ross v. Crockett*, 14 La. Ann. 811; *Board of Trustees, etc. v. Campbell*, 48 La. Ann. 1543; 21 So. 184.

3. **Contents of the Charter (sec. 685).** — The charter must contain:

a. **Name.** — A corporation organized under "Limited Liability Act" must have the word "limited" in its name. Similarity of names is not forbidden.

b. **Domiciliary Office.** — The location of the principal office or place of business within the State.

c. **Purposes.** — Corporations may be organized for more than one purpose if none of these are within those classes for which special acts are provided, and if the corporation has a subscribed capital of \$3,000 or over (Laws of 1904, Act 78).

d. **Service of Process.** — An officer must be designated upon whom process may be served.

e. **Capital Stock.** — Amount of capital stock, number of shares, par value of same, time when and manner in which payment thereof shall be made. The subscribed capital stock of all companies incorporated under Act 78, Laws of 1904, must be not less than \$3,000. The par value of the shares may be any amount.

f. **Election of Directors.** — The mode in which the election of directors shall be conducted.

g. **Dissolution.** — The mode of liquidation at the termination of the charter (sec. 685).

The duration of charters is ninety-nine years (sec. 684).

*L. N. & F. Co. v. Douillet (La.)*; 38 So. 613.

**4. Statutory Powers.** — The statute enumerates the implied common law powers of corporations, and also confers the following additional powers: Business and manufacturing corporations whose objects are of the same general nature may consolidate. The right to receive legacies and donations is also given (sec. 684; Laws of 1874, Act approved Dec. 12; see also Cons., 1898, sec. 265).

**5. Corporate Indebtedness.** — Railway, plank road, turnpike, canal, warehouse, drainage, sewage, land reclaimer, levee building, waterworks, electric lighting and power, bridges, mills and refineries, saw-mills, rice-mills, cotton-oil mills, erecting companies, ship-building and dock corporations may borrow money and issue bonds and mortgage their properties and franchises under such terms as the directors may direct or deem expedient (Laws of 1902, Act 30; see also Laws of 1902, Act 121).

**6. Procuring the Charter.** — The articles must be signed and acknowledged before a notary. Charters for commercial and manufacturing corporations must be recorded in the office of the recorder of mortgages of the parish of their domicile, together with a list of subscriptions to their stock. Such charters must also be published in some daily newspaper within the parish of the domicile five times within thirty days. It is not necessary to publish the list of subscribers. A duly certified copy of the charter taken either from the record of the notary before whom the act was passed, or from the record thereof in the office of the recorder in whose office said charter shall have been recorded, must be filed in the office of the Secretary of State. To this copy must be affixed the certificate of the recorder, attesting recordation of the act in his office, etc.; also a copy of one issue of the newspaper wherein the said charter shall have been published, together with the affidavit of publication (secs. 677, 686; Laws of 1898, Act 59).

**7. Organization Tax.** — There is no organization tax properly speaking. The principal expense involved is the fee to the notary for drawing the charter. His fees range from \$25 up, the same being regulated by the length of the charter and the amount of the capital stock.

**8. Filing and Recording Fees.** — To the Secretary of State for recording charter, 25 cents per hundred words; for certificate of recordation, \$1; for certified copy of charter, \$1; for filing and recording amendments to charter, 25 cents per hundred words; for recording charter in local parish, recording fees, 15 cents per hundred words.

**9. Commencing Business.** — Corporations may begin business immediately after the first publication of the charter. Under Act 78, Laws of 1904, at least \$3,000 of the capital stock must be subscribed for in order to entitle the corporation to begin business.

Globe Realty Co. v. Whitney, 106 La. Ann. 257; 30 So. 745.

**10. Organization Meeting.** — In the absence of any statute providing otherwise, the organization meeting must be held within the State (sec. 741).

**11. Meetings of Stockholders and Directors.** — All meetings, whether of stockholders, directors, or officers, must be held at the domicile of the corporation within the State. The law provides that any such meeting held elsewhere and any business transacted thereat shall be unlawful and of no effect (sec. 741).

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — The statute does not provide the specific number of directors, neither are there any residential requirements (sec. 684).



*b. Liabilities.* — There are no statutory liabilities imposed upon directors.

13. **Stockholders' Liabilities.** — Stockholders are liable for unpaid balance due the company on shares owned by them. The statute specifically provides that no mere informality in organization shall have the effect of exposing a stockholder to any liability for unpaid balance due on their stock. The statute further provides that the word "limited" shall be the last word of the name of every corporation. The act further provides that the omission of the word "limited" in the use of the name of the corporation shall render it and every person participating in such omission or knowingly acquiescing therein liable for any indebtedness, damage, or liability arising therefrom (sec. 690; Laws of 1888, Act 36).

14. **Stock Certificates.** — Every stockholder is entitled to have a certificate issued to him signed by such officers as may be designated in the by-laws.

15. **Preferred Stock.** — There is no statutory authorization for the issuance of preferred stock.

16. **Payment of Capital Stock.** — Stock may be issued under the constitution for labor done or money or property actually received. All fictitious issues of stock are declared void (Cons., Art. 266).

17. **Books.** — The corporation is required to keep a stock transfer book at its domicile within the State. This book must be kept open for public inspection (Cons., Art. 273).

*Legendre v. Association*, 45 La. Ann. 669; 12 So. 837; *Bourdette v. Sieward*, 107 La. Ann. 258; 31 So. 630.

18. **Office.** — Every corporation is required to keep a public office or place of business within the State for the transaction of its business (Cons., Art. 264, 273; R. S., sec. 740).

19. **Reports.** — The president, cashier, secretary, or agent of every stock corporation must, on or before the first day of March in each year, make and deliver to the State collectors or assessors of the parish in which such company is liable to be taxed a written statement under oath specifying: first, the real estate, if any, owned by such company when the same is located in this State; second, the capital stock actually paid in and not invested in real estate; third, the place of its principal business or where its principal operations are carried on in which it is liable to be taxed (sec. 736; see also Laws of 1898, Act 170).

20. **Anti-Trust Statute.** — There is a constitutional prohibition forbidding corporations to combine or conspire together for the purpose of forcing up or down the price of any agricultural product or article of necessity for speculative purposes (Cons., Art. 190). Under the Act of July 7, 1892, this constitutional provision is put in force in the form of an express anti-trust statute (Laws of 1892, Act 90).

21. **Annual License Tax.** — There is no annual license tax, properly speaking, in existence in Louisiana.

22. **Extension of Corporate Existence.** — There is no statutory provision therefor.

23. **Statutory Grounds for Forfeiture of Charter.** — The charter may be forfeited for fictitious issues of stock, for violation of the anti-trust act and for insolvency (Laws of 1902, Act 224; see also Cons., Art. 266, and R. S., sec. 731).

*La. Savings Bank*, 35 La. Ann. 196.

**24. Amendments.** — The law provides that stockholders of any corporation at a general meeting convened for that purpose may make any alterations, additions, or changes in their charter with the assent of three-fourths of the stockholders represented at said meeting. Such amendments as are adopted to be recorded as in the case of original charters. Special provision is made in the case of increase or decrease in the capital stock. To effect such a change directors of the corporation must publish a notice for thirty days preceding the time fixed for such meeting, that a meeting of the stockholders will be held at the office of the corporation for the purpose of deciding upon such increase or decrease and shall also deposit a written or printed copy of such notice in the post-office prepaid, addressed to each stockholder at his usual place of residence at least forty days before the date fixed for such meeting. At the meeting, when held, stockholders being present either in person or by proxy holding an amount not less than two-thirds in value of the stock, a vote may be taken thereat upon the proposed increase or decrease of the capital stock. If stockholders holding not less than two-thirds of the stock of the corporation have voted in favor of the proposed increase or decrease of stock, a certificate of the proceedings shall be made, showing compliance with the provisions of law, the amount of the capital stock at the time such vote was taken, and the number of holders thereof, the amount and number of shares to which it was proposed and carried to increase or decrease, the amount and number of shares whose holders have voted against such change, and the whole amount of the debts and liabilities of such corporation. The said certificate shall be signed by the chairman and secretary of the stockholders' meeting and shall be verified by their affidavits, and shall be filed in the office of the Secretary of State (sec. 687; Laws of 1882, Act 26; Laws of 1898, Act of July 14 of that year).

In making amendments to charters, it is necessary that the same be published and recorded in the same manner as the original charter.

**25. Dissolution.** — Corporations may be dissolved by vote of three-fourths of the stockholders represented at any meeting called for that purpose (Civ. Code, Art. 447; R. S., sec. 688; Laws of 1902, Act 224).

*Curie v. Santini*, 16 La. Ann. 27.

**26. Foreign Corporations.** — All foreign corporations doing business within the State must file in the office of the Secretary of State a written declaration setting forth the place or locality of its domicile or place in the State where it is doing business, and the name of an agent within the State upon whom process may be served (Laws of 1904, Act 54). They are also required to file the same annual reports as are exacted of domestic corporations (sec. 736, Laws of 1898, Act 170). Under the Laws of 1898, Act 127, an annual license tax is authorized to be levied upon certain classes of corporations doing business within the State whose domiciles are in other States or foreign countries. This act is not general, but only applies to such corporations as are especially named in the act. The constitutionality of this statutory enactment is questioned on the ground of lack of uniformity. (See Cons., Art. 242.)

*State ex rel. Watkins v. Company*, 106 La. Ann. 621; 31 So. 172; *State v. Southern Pacific Co.*, 52 La. Ann. 1822; 28 So. 372; *Milwaukee Trust Co. v. Insurance Co.*, 106 La. Ann. 669; 31 So. 298; *New Orleans v. Insurance Co.*, 106 La. Ann. 31; 30 So. 254.

MAINE.

(The references cited below are to the Revised Statutes of 1904, chap. 47, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — Business corporations are organized under the provisions of chap. 47 of the Revised Statutes of 1904. Special acts are provided for banks, gas and electric companies, navigation, railway, insurance, and trust companies, telegraph and telephone, water and aqueduct corporations. Corporations may, however, be formed for the construction and operation of railways without the State; also telegraph and telephone companies, gas and electrical companies with the same limitations (sec. 6).

2. **Incorporators.** — Any number of persons not less than three may incorporate. There are no specific residential requirements (sec. 6).

*Ulmer v. Company*, 98 Me. 579; 57 Atl. 100.

3. **Procuring the Charter.** — The incorporators should first prepare and sign written articles of association, setting forth the purposes of the corporation, the place where the first meeting of incorporators shall be held, and the date thereof, together with the names and residences of the incorporators. They should then sign a waiver of notice of the first meeting of incorporators, fixing the time and place of holding said meeting, describing the purposes thereof as follows: (1) to organize into a corporation; (2) to adopt a corporate name; (3) to define the purposes of the corporation; (4) to fix the amount of capital stock and divide the same into shares; (5) to elect a president, not less than three directors, a clerk, a treasurer, and all other necessary officers; (6) to adopt a code of by-laws; (7) to act upon any other business which may properly come before the meeting. The meeting should then be held, whereat a chairman and a clerk are chosen. The clerk should be forthwith sworn. After the business described above is concluded, a certificate of organization should be prepared and signed by the president and a majority of the board of directors (for contents of certificate of organization see sec. 4, *post*). This certificate must be sworn to by the persons signing the same. The certificate of organization must next be submitted to the Attorney-General for examination and approval. After this is obtained, the certificate of organization, together with the certificate of the Attorney-General approving the same, must be recorded in the office of the register of deeds of the county where the principal place of business of the corporation is located. Within sixty days after the date of the organization meeting, a copy of the certificate of organization duly certified by such register of deeds must be filed in the office of the Secretary. As soon as the certificate above referred to is filed in the office of the Secretary of State the corporate existence commences (secs. 6, 8, and 10).

4. **Contents of the Certificate of Organization.** — The certificate must set forth:

*a. Name.* — The name of the corporation. Similarity of names is not forbidden.

*b. Purposes.* — As many purposes as may be desired may be inserted provided they are not covered by special acts.

*c. Capital Stock.* — The capital stock cannot be less than \$1,000.

*d. Capital Stock paid in.* — No particular amount required by statute.

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*e. Par Value of Shares.* — This may be any amount.

*f. Stockholders.* — Names and residences of the subscribers to capital stock.

*g. Domiciliary Office.* — The name of the county where the corporation is located.

*Chafee v. Bank*, 71 Me. 514.

*h. Directors.* — Number and names of directors. There must be at least three, and all must be stockholders. There are no residential requirements.

*i. Clerk.* — Name and residence of the clerk. The clerk must be a resident of the State (secs. 3, 7).

**5. Statutory Powers.** — In addition to the enumeration of the common law powers of corporations, the statute grants to corporations a number of additional powers which may be enumerated as follows: To hold stock and bonds in other corporations, to conduct business in other States and countries, to issue preferred stock, to consolidate with other corporations, to vote by proxy, to forfeit stock for non-payment of assessments, to hold directors' meetings outside of the State, to issue stock for services and property (secs. 16, 17, 37, 38, 46, 51).

*Franklin Co. v. Bank*, 68 Me. 43.

**6. Corporate Indebtedness.** — There is no statutory limitation as to the amount of indebtedness.

**7. Organization Tax.** — The organization tax is \$10 for companies having a capital stock of \$10,000 or less. Beyond that and up to \$500,000 the organization tax is \$50, and for each hundred thousand dollars in excess of \$500,000, \$10 additional (sec. 8).

**8. Filing and Recording Fees.** — Fee to Attorney-General for examining and approving the certificate of organization, \$5; fee to register of deeds for recording certificate of organization and making certified copy thereof, usually about \$5; fee to Secretary of State for receiving, filing, and recording certified copy of certificate of organization, \$5; fee to Secretary of State for certified copy of certificate of organization, \$5.

**9. Commencing Business.** — Aside from the right to perfect the organization of the corporation, no business can be transacted until after the certificate of organization is approved by the Attorney-General, recorded in the office of the register of deeds, and a certified copy thereof filed in the office of the Secretary of State (sec. 10).

**10. Organization Meeting.** — Must be held within the State in the absence of any statute authorizing it to be held elsewhere (sec. 7). The first directors' meeting should also be held there (*Laws of 1903*, chap. 182).

*Freeman v. Company*, 38 Me. 343.

**11. Meetings of Stockholders and Directors.** — All meetings of stockholders must be held within the State. Directors' meetings may be held without the State if the by-laws so provide (secs. 7, 19).

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors, each of whom must be a stockholder. There are no residential requirements. They may be classified if desired, and may act through committees (sec. 19).

*b. Liabilities.* — Directors are liable for the illegal declaration of dividends (sec. 32).

**13. Stockholders' Liabilities.** — Stockholders in ordinary business cor-

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porations are liable only for their unpaid stock subscriptions (secs. 84, 95). They are also liable to creditors to the extent of illegal dividends received by them (sec. 32).

*Grindle v. Stone*, 78 Me. 176; 3 Atl. 183.

**14. Stock Certificates.** — Each shareholder is entitled to have a stock certificate issued to him signed by the president or vice-president, and by the cashier, clerk, or treasurer (sec. 34).

**15. Preferred Stock.** — Two or more kinds of stock may be created with such distinctions, preferences, and voting powers as shall be fixed and determined by the by-laws or by vote of the stockholders at a meeting called for that purpose. Any or all of the capital stock may be preferred, and any dividend paid thereon that may be desired (sec. 49).

**16. Payment of Capital Stock.** — A corporation may purchase mines, manufactories, or other property necessary for its business, and the stock of other companies owning mining, manufacturing apparatus, mills, or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor. May likewise issue stock for services rendered to such corporation, and the stock so issued shall be full-paid stock and not liable to any further call or payment thereon, and in the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased or services rendered shall be conclusive (secs. 50, 51).

*Libby v. Tobey*, 82 Me. 397; 19 Atl. 904.

**17. Books.** — The clerk is required to keep at the office of the corporation within the State all corporate records and a stock register which shall be open at all reasonable hours to the inspection of persons interested, who may make extracts therefrom (secs. 19, 21).

**18. Office and Clerk.** — All domestic corporations must have a clerk and must keep at some fixed place within the State a clerk's office where shall be kept the corporate records and the stock register (secs. 3, 20).

**19. Reports.** — Corporations must file in the office of the Secretary of State annually on or before the first day of June a statement signed and sworn to by the president or treasurer containing the names of the directors, the president, treasurer, and clerk, with the residence of each, the location of its principal office within the State, and the amount of authorized capital stock (sec. 26).

**20. Anti-Trust Statute.** — Combinations for regulating prices are prohibited (secs. 53, 55).

**21. Annual Franchise Tax.** — Where the authorized capital stock does not exceed \$50,000, the annual franchise tax is \$5. Where the capital stock does not exceed \$200,000, the tax is \$10; where it does not exceed \$500,000, the tax is \$25; where it does not exceed \$1,000,000, the tax is \$50; for each additional million dollars, or part thereof, \$25 additional. This tax becomes due and payable on the first day of September, and is assessed on or before the first day of July of each year (chap. 8, secs. 18, 22).

**22. Statutory Grounds for Forfeiture of Charter.** — Failure to organize within two years from the date when the certificate of organization has been filed with the Secretary of State renders the charter liable to forfeiture. Also whenever the annual franchise tax shall have remained in arrears for the period of one year after the same shall have become payable (chap. 1, secs. 28, 29; chap. 8, secs. 21, 22; chap. 47, sec. 31).

**23. Amendments.** — To change the par value of the shares of the capital stock requires a meeting of the stockholders called for that purpose accompanied by a vote thereat representing a majority of the stock issued in favor of the change. A certificate thereof, signed by the president or clerk, shall be filed in the office of the Secretary of State in the same manner as provided by law for changing any charter or certificate of organization (sec. 36).

To increase the capital stock or change the number of directors the stockholders may, by a vote representing a majority of the stock issued, increase the amount of its capital stock to any amount, and may change the number of directors in like manner. The corporation shall file a certificate thereof with the Secretary of State within ten days thereafter. Thereupon such vote shall take effect (sec. 39).

To decrease the amount of the capital stock the stockholders, at a meeting duly called for that purpose, or at any annual meeting, when notice shall have been given of such proposed action in the call therefor, may, by a vote representing a majority of the stock issued, decrease the amount of its capital stock to any amount desired, and the corporation shall give notice of such change to the Secretary of State within ten days thereafter, and each stockholder shall within three months after such meeting surrender such a proportion of his stock as the amount of decrease shall bear to the amount of the capital stock before the decrease, so that each stockholder shall have the same proportion of the whole capital stock of the company as before the decrease (sec. 40). (For certificates of reduction of capital when impaired, see secs. 41-44.)

A corporation may at a legal meeting of its stockholders vote to change its name and adopt a new one, and when the proceedings of such meeting, certified by the clerk thereof, are returned to the office of the Secretary of State to be recorded by him, the name shall be deemed changed (sec. 45).

Any corporation may by a vote representing a majority of the stock issued change its location from one county to another in the State, provided it shall file by its clerk or other officer in the registry of deeds in each of said counties, twenty days after such change of location, the certificate required by sec. 22 of chap. 47 of the Revised Statutes, 1904 (sec. 52).

The law also provides that whenever a corporation shall make a change in its charter or certificate of organization in any manner for the more convenient transaction of its business, it shall forward a notice of such change to the Secretary of State, who shall record the same in a book kept for that purpose (sec. 45).

The purposes of the corporation cannot be changed, apparently, except by special act of the legislature.

**24. Extension of Corporate Existence.** — There is no provision for the extension of corporate existence.

**25. Dissolution.** — Corporations may be dissolved upon application to the courts (secs. 77, 83).

**26. Foreign Corporations.** — There are no statutory requirements as to the transactions of business by foreign corporations within the State. No license fee is exacted.

*Cousens v. Lovejoy*, 81 Me. 467; 17 Atl. 495; *Childs v. Cleaves*, 95 Me. 498; 50 Atl. 714.

MARYLAND.

(The references cited below are to Art. XXIII. of the Public General Laws, 1904, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Maryland is found in the Public General Laws, 1904, Art. XXIII. secs. 1-417 inclusive. Under this act corporations may be formed for any purpose designated in twenty-eight classes.<sup>1</sup>

2. **Incorporators.** — Five or more persons, who must be citizens of the United States and a majority of them citizens of Maryland (secs. 14, 50.)

3. **Contents of the Certificate of Incorporation.** — The certificate must set forth:

a. *Incorporators' Names.* — Names in full and places of residence of the incorporators (sec. 50, sub. 1).

<sup>1</sup> An entirely new business corporation act has been prepared by a commission appointed for that purpose, and this will be reported to the legislature that convenes during the winter of 1906. Among the changes made in existing law by the proposed bill are the following:

The official title of the State Tax Commissioner is changed to "the State Corporation Commissioner." Certificates of incorporation are to be acknowledged and submitted to a judge, as at present, then sent to the State Corporation Commissioner, who collects his fee for recording it, as well as the bonus tax. After recording the instrument he returns it for record to the court from which it came. In the existing law the purposes for which a corporation can be formed without going to the legislature are enumerated, and it sometimes happens that when a charter is desired the list in the Code does not cover the desired subject. This particular defect was remedied, but there are doubtless others. The proposed law simplifies matters by providing that under it corporations may be formed "for any one or more lawful purposes except municipal and banking purposes." The "Bonus tax" upon incorporation is reduced from one-eighth of 1 per cent on the authorized capital stock to 20 cents per \$1,000 of capitalization. At present the number of directors must be not less than four, a majority of whom must be residents of the State. The change proposed is to reduce the necessary number to three, one of whom must reside in the State. The extra liability of stockholders is abolished except in the case of banks, etc., where it is required by the Constitution. Under the present law there is but one kind of preferred stock permitted, and that is a lien on corporation assets and a preference over subsequent creditors. The bill permits the classification of shares at pleasure as to privileges, preferences, and restrictions.

But the two most important of the proposed changes relate to taxation and condemnation. It has long been a complaint that the tax laws of this State give such a preference to foreign corporations in matter of taxation that nearly all companies, even those which are to do business exclusively in this State, are driven abroad for their charters. This inequality will be removed if the proposed bill is enacted. Under this bill the shares of domestic corporations will not be assessed for taxation and no reports to the State Tax Commissioner will be required. They will pay an annual franchise tax of \$25 for each full \$50,000 of capitalization up to \$500,000. Over \$500,000 the tax will be one fortieth of 1 per cent on the excess. Under \$50,000 the tax will be \$25 per year, and the assets, real and personal, of the corporation are assessed as if they were the property of individuals. One-half of the annual franchise tax is to go to the State and the other half to the city or county, as the case may be, where the corporation is located. Ordinary business corporations chartered by other States are to pay taxes as domestic corporations pay, and in addition resident shareholders must pay the 30 cent rate of taxes, as imposed by existing law. This is, to the extent of that 30 cent tax, a preference for the home-chartered companies.

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*b. Name.* — Corporate name, which shall always include the name of the county or city in which it may be formed. Similarity of names not forbidden (sec. 50, sub. 2).

*c. Purposes.* — The objects or purposes for which the corporation is formed. The statute expressly provided that companies may be incorporated for two or more of the purposes designated in the various classes (secs. 44, 50, sub. 3).

*Basshor v. Dresel*, 24 Md. 503; *Fraternal Alliance v. State*, 77 Md. 547; 26 Atl. 1040; *Fraternal Alliance v. State*, 86 Md. 550; 39 Atl. 512.

*d. Duration.* — Time of existence not to exceed forty years; provided that the limitations as to the duration of the existence of corporations formed under this article shall not apply to gas light companies, cemetery companies, or to corporations formed for the creation or maintenance of educational associations, universities, colleges, academies, hospitals, or asylums, and that certificates of incorporation of all corporations named in the proviso may contain provisions for perpetual existence (sec. 50, sub. 3).

*e. Proviso for the Regulation of Internal Affairs.* — Articles, conditions, and provisions under which the corporation is formed (sec. 50, sub. 3).

*f. Domicile.* — Places where the operations of the corporation shall be carried on and location of the domiciliary office within the State (sec. 50, sub. 4).

*g. Capital Stock.* — Amount of capital stock, if any. This is unlimited as to amount (sec. 50, sub. 5).

*h. Shares.* — Number and par value of shares. Par value of shares may be any amount (sec. 50, sub. 6).

*i. Directors.* — Number of directors and names of the board for the first year (sec. 50, sub. 7).

**4. Statutory Powers.** — In addition to the statutory enumeration of common law powers, corporations have the following additional powers: To vote by proxy at stockholders' meetings, to forfeit the stock for non-payment of assessments, to consolidate with other corporations, to remove directors, and to hold property within or without the State (secs. 7, 11, 45, 58, 63).

*Booth et al. v. Robinson et al.*, 55 Md. 419.

**5. Procuring the Charter.** — Charter must be executed and acknowledged and then submitted to one of the judges of the judicial circuit within which the principal office of the corporation is to be located (in Baltimore, to one of the judges of the Supreme Bench of Baltimore City). If he approves it, he certifies that fact upon the certificate. The certificate is then recorded in the office of the clerk of the circuit court of the county in which the principal office is to be located (in Baltimore in the office of the clerk of the Superior Court of Baltimore City). Upon so recording corporate existence commences.

A copy of the charter must then be sent to the State Tax Commissioner of the State of Maryland, together with the bonus tax of one-eighth of one per centum on the amount of the capital stock of said company, as prescribed by Article LXXXI. The corporate existence then commences, but the corporation has no corporate existence until this bonus tax is paid. (See notes under head of "Organization Tax.")

The certificate of the judge is made conclusive evidence that the certificate does conform to law.

*Bonaparte v. B. H., etc. Co.*, 75 Md. 340; 23 Atl. 784.



6. **Corporate Indebtedness.** — Corporate indebtedness must not exceed total amount of authorized capital stock (sec. 83).

7. **Organization Tax.** — The organization tax is one-eighth of one per cent upon the capital stock authorized (G. L., Art. LXXXI. secs. 98–103).

Roland Park Company v. State, 80 Md. 448; 31 Atl. 298; State v. Schultz Co., 83 Md. 58; 34 Atl. 243.

The Maryland taxing statute provides that every company, whether created by special charter or formed under a general law, shall pay to the State upon incorporation a bonus tax of one-eighth of one per cent upon the amount of its capital stock; and it is declared, until such bonus is paid to the State Treasurer, the corporation shall not have or exercise any corporate powers. Cemetery companies, companies created for purely benevolent and charitable purposes, railroad companies, and building and homestead associations are excepted from the provisions of this law.

8. **Filing and Recording Fees.** — Filing fees in local county office, 10 cents per folio; clerk of the courts fees, \$5; cost of certified copy of the certificate of incorporation for filing with State Tax Commissioner, \$2.

9. **Commencing Business.** — Corporations cannot commence business until a certified copy of the articles is filed with the tax commissioner. No special amount of stock need be subscribed, but one-fourth of the capital stock must be paid in each year.

10. **Organization Meeting.** — The organization meeting must be held within the State, in the absence of any statute providing otherwise.

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State. Directors' meetings may be held without the State if the by-laws so provide (secs. 6, 7).

Darrin v. Hoff. (Md.), 58 Atl. 196.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — Must not be less than four nor more than twelve. All must be citizens of the United States, and a majority of them citizens of Maryland. They may be removed by the stockholders (sec. 65). Cumulative voting may be provided for, if desired (sec. 66).

*b. Liabilities.* — Directors are liable for illegal payment of dividends and for loans to stockholders. The president and a majority of the directors must within thirty days after the payment of the last instalment of the capital stock make a certificate stating the amount of capital stock paid in and of all property received in payment of stock subscriptions and the extent to which such payments have been made in property. The certificate must be then signed and sworn to by the president, and must be filed with the clerk of the court in which the certificate of incorporation is recorded (secs. 73, 75, 76, 77).

Fisher v. Parr, 92 Md. 274; 48 Atl. 621.

13. **Stockholders' Liabilities.** — Stockholders are liable to the extent of their unpaid stock subscriptions. They are also liable to creditors to an amount equal to the amount of their stockholdings for all debts contracted in the name of the corporation until the amount of capital stock fixed in the certificate of incorporation has been paid in, and a certificate thereof made and filed as provided by law (secs. 72, 74, 384).

Frank v. Morrison, 58 Md. 440.

14. **Stock Certificates.** — Each stockholder is entitled to a certificate signed by such officers as the by-laws may prescribe.

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**15. Preferred Stock.** — Preferred stock may be issued either by providing for such issuance in the certificate of incorporation, or by vote of the common stockholders thereafter had (sec. 408).

*Robertson v. Parks et al.*, 76 Md. 118; 24 Atl. 411; *Scott v. B. & O. Ry. Co.*, 93 Md. 500; 49 Atl. 327; *Heller v. Marine Bank*, 89 Md. 608; 43 Atl. 800; *Rogers, Brown & Co. v. Citizens Bank*, 93 Md. 615; 49 Atl. 843.

**16. Payment of Capital Stock.** — Stock subscriptions may be paid for in land or other property at a valuation agreed upon between the corporation and the subscribers where the property is such as is suitable for corporate purposes (secs. 69-70; see also sec. 73).

**17. Books.** — A book must be kept containing a list of stockholders, showing place of residence and number of shares held by them, time when they became owners of such shares; and such book must be kept open for inspection during business hours by the stockholders (sec. 80; see also sec. 5).

*Weihenmayer v. Bitner*, 88 Md. 325; 42 Atl. 245; *Brant v. Ehlen*, 59 Md. 1; *Cahill v. Association*, 94 Md. 353; 50 Atl. 1044.

**18. Office.** — Must maintain an office in the State (sec. 50).

**19. Reports.** — Stockholders owning five per cent of the capital stock are entitled, upon written request, to have a report in detail of assets and liabilities of the corporation. In January and July the president and treasurer file statement of affairs in records of the corporation (secs. 5, 79, 80).

**20. Anti-Trust Statute.** — There is no anti-trust statute in Maryland.

**21. Statutory Grounds for Forfeiture of Charter.** — Charters may be forfeited for failure to pay taxes for a period of two years, or for non-user or misuser of corporate powers (secs. 108, 109).

**22. Amendments.** — The amendment must be made by a vote of the stockholders of the corporation, and must be made, acknowledged, and recorded in the same manner as is provided in the case of original charters. The foregoing is the general provision of law applicable to amendments of charters (sec. 47).

In the case of increase or decrease in capital stock a meeting of the stockholders must be called by the directors publishing a notice signed by at least a majority of them, in a newspaper published in the locality where the principal office of the corporation is located, for at least four successive weeks. This notice must also be sent through the post-office, addressed to each stockholder at his usual place of residence, at least three successive weeks previous to the date fixed for the holding of such meeting. The notice must specify the object of the meeting, the time and place where such meeting shall be held, and the amount to which it is proposed to increase or decrease the capital stock. If, at this meeting, stockholders shall appear in person or by proxy in number representing not less than two-thirds of all of the shares of the stock of the corporation, and shall vote at least two-thirds of all the shares of stock in favor of such increase or decrease, this is sufficient to effect the amendment desired. Thereafter a certificate of the proceedings showing compliance with the law, the amount of capital actually paid in, and the amount to which the capital stock is to be increased or diminished, must be made and signed by the chairman of the stockholders' meeting, and the certificate must be sworn to by the president and recorded in the office of the clerk of the Superior Court of Baltimore City, if the principal office of such corporation shall be therein located, or in the office of the clerk of the circuit

court for the county in which the principal office may be located (secs. 74, 78). In no event can the capital stock be reduced to less than the amount of the outstanding debts and liabilities (secs. 83-88).

Where the par value of the stock has been reduced by losses it is competent for the stockholders in a general meeting assembled to establish the true value of the stock of such corporation, and they may also provide for calling in and cancelling the whole or any part of such stock and issuing other stock instead thereof at such par value as they may decide on so as to represent the amount of the true value so established of the stock of such corporation; and they may also provide for creating and disposing of additional stock so as to make up the entire value of the stock of the corporation, and the amount designated in the certificate of incorporation, or for a greater or less amount as may be decided by the stockholders. Notice of such meeting of stockholders shall be given in the same manner as is prescribed in the case of increase or decrease of capital stock (secs. 79, 80). With respect to other amendments the act provides as follows: If any amendment of the charter of any corporation is desired, it may be made by a majority vote of the stockholders at a meeting duly called for that purpose. This amendment must be embodied in the form of certificate of amendment, and must be approved, made known, acknowledged, and recorded in the same manner as is provided in the case of original charters (sec. 55).

Manufacturing corporations may change or extend their business by taking the same steps and proceedings as are required of all business corporations upon the increase and diminution of their capital stock, and if the assent of two-thirds of the holders of shares of stock shall be obtained to the proposed change, then upon the making out and recording of certificate showing compliance with the said provisions and preliminary steps setting forth the business to which the business of such corporation has been changed or enlarged, then the business which said corporation may carry on thenceforth shall be that to which it has been thus changed or enlarged (sec. 143).

23. **Extension of Corporate Existence.** — (Secs. 108-109.)

24. **Dissolution.** — By the State (Attorney-General), forfeited for abuse, misuse, or non-use of corporate powers; or by vote of stockholders for any reason, by bill in equity in name of the corporation. There can be no dissolution until all State taxes are paid (secs. 367, 376-390).

25. **Annual Franchise Tax.** — None after organization, but one-eighth of one per cent each year, unless the company is organized within two years from date of certificate of incorporation (secs. 108-109).

26. **Foreign Corporations.** — File with Secretary of State their charter, with fee of \$25, and a statement setting forth amount of capital stock authorized and issued, assets and liabilities, character of business, principal office in State, and appoint agent to receive process (secs. 137, 138, 139, 140, 141).

*Crook v. Company*, 87 Md. 138; 39 Atl. 94; *Condon v. Association*, 89 Md. 99; 42 Atl. 944.

## MASSACHUSETTS.

(The references cited below are to the Laws of 1903, chap. 437, commonly known as the "Business Corporation Law.")

1. **Statutes under which Business Corporations may incorporate.** — Under the act that went into effect August 1, 1903, parties may incorporate

for any lawful purpose not covered by special act, except to buy and sell real estate or to distil and manufacture intoxicating liquors. Special acts are provided for banking, trust, surety, safe deposit, insurance, railway, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, cemetery, and crematory companies.

2. **Incorporators.** — There must be at least three incorporators. There are no residential requirements (sec. 7).

*Walworth v. Brackett*, 98 Mass. 98.

3. **Articles of Incorporation and Organization.** — The incorporators should first prepare and sign an agreement of association, stating (a) that the subscribers thereto associate themselves together with the intention of forming a corporation. The agreement should also set forth (b) the corporate name to be assumed, (c) the location of the principal office of the corporation in the Commonwealth and elsewhere, as well as if the corporation is organized to do business wholly outside of the Commonwealth. In addition to the foregoing the agreement should also set forth (d) the purposes for which the corporation is formed, the nature of the business to be transacted,<sup>1</sup> (e) total amount of authorized capital stock of the corporation not to be less than \$1,000, par value of the shares not to be less than \$5, and the number of shares into which the capital stock is to be divided, and the restrictions if any imposed upon its transfer. If there are more than two classes of stock, a description of the classes and a statement of the terms upon which they are to be created and the method of voting thereon. (f) If desired, provisions may be inserted for the conduct and the regulation of the business of the corporation, for its voluntary dissolution, or for limiting or defining or regulating the powers of the corporation or of its directors or stockholders. (g) The subscribers by whom the first meeting of the corporation is to be called must be stated, or, in lieu thereof, the notice of said meeting is waived in writing by each of the incorporators. (h) There must also appear the names and residences of the incorporators, and the amount of stock subscribed for by each. The meeting should then be held, whereat a chairman and temporary clerk should be chosen. The clerk should be forthwith sworn. After by-laws have been adopted the incorporators must proceed to the election of directors, a treasurer, clerk, and such other officers as the by-laws may prescribe. A majority of the directors must forthwith make, sign, and make oath to the articles of organization (for contents of articles of organization see sec. 4, *post*). The articles of organization and the records of the first meeting of incorporators must be submitted to the commissioner of corporations for examination, and he may require such amendments thereof and such additional information as he may think necessary. If he finds the articles conform to the provisions of the statute, he shall so certify and endorse his approval thereon. Thereupon the articles shall, upon payment of the organization tax, be filed for record in the office of the Secretary of State of the Commonwealth, who will issue a certificate of incorporation. The corporate existence commences upon the filing of the articles of organization in the office of the Secretary of the Commonwealth. The certificate of incorporation or a certified copy thereof is conclusive evidence of the existence of the corporation (secs. 8, 9, 10, 11, 12).

*Bird v. Daggett*, 97 Mass. 494.

<sup>1</sup> The Secretary of State permits the insertion of any number of purposes in the articles of association not covered by special act.

4. **Contents of the Articles of Organization.** — The articles of organization must set forth: (a) A true copy of the agreement of association, and the names of the subscribers thereto. (b) The date of the first meeting and all adjournments thereof, if any. (c) Amount of capital stock to be issued, the amount thereof to be paid for in cash, by instalments, and the instalment to be paid before the corporation commences business, and the amount thereof to be paid for in property. If such property consists in part of real estate, its location and the amount of stock to be issued therefor shall be stated. If any part of such property is personal, it shall be described in such detail as the commissioner of corporations may require, and the amount of stock to be issued therefor shall be stated. If any part of the capital stock is issued for services or expenses, the nature thereof and the amount of stock which is issued therefor shall be stated. (d) The name, residence, and post-office address of each of the officers of the corporation (sec. 11).

5. **Corporate Name.** — The name used shall indicate that it is a corporation as distinguished from a natural person or partnership. It is forbidden to use the name of another domestic corporation or of a foreign corporation, or of any partnership or association carrying on business in the Commonwealth at the time of such organization or within three years prior thereto, or a name so similar thereto as to be liable to be mistaken for it, except with the consent in writing of said corporation, association, or partnership. Courts are given express jurisdiction in equity to enjoin the illegal use of the corporate name (sec. 5).

*B. R. Co. v. Company*, 149 Mass. 436; 21 N. E. 875.

6. **Statutory Powers.** — In addition to the enumeration of common law powers of corporations, the statute grants to corporations a number of extraordinary powers which may be enumerated as follows: To have perpetual succession; to insert in the agreement of association rules for the regulation of the internal affairs of the corporation; to appoint an executive committee from its board of directors, to whom may be delegated the management of the current and ordinary affairs of the corporation. The act expressly forbids a corporation to vote upon any share of its own stock. It authorizes corporations to vote by proxy, to forfeit shares for non-payment of assessments, to issue preferred stock, and to classify directors (secs. 4, 16, 19, 23, 24).

*Commonwealth v. Railway*, 142 Mass. 146; 7 N. E. 716; *McNeil v. Boston Chamber of Commerce*, 154 Mass. 277; 28 N. E. 245; *S. W. Co. v. Lamb*, 143 Mass. 420; 9 N. E. 823; *French v. Company*, 145 Mass. 261; 14 N. E. 113; *Kelly v. Biddle*, 180 Mass. 147; 61 N. E. 821; *U. W. Co. v. Stone*, 127 Fed. 587.

7. **Corporate Indebtedness.** — There is no limit to the amount of corporate indebtedness in Massachusetts.

8. **Organization Tax.** — The organization tax is 25 cents on each thousand dollars of authorized capital stock, except that in no case shall it be less than \$10 (sec. 88).

9. **Filing and Recording Fees.** — There are no filing or recording fees due the Secretary of State other than the payment of the organization tax. The charge for issuing certified copy of certificate of incorporation is \$1. The charge for filing and recording amendments to articles of incorporation is \$5, except in the case of increase of capital stock. The charge for filing annual certificate of condition is \$5.

10. **Commencing Business.** — Aside from the right to perfect the organization of the corporation, no business can be transacted until the articles of

organization have been approved by the commissioner of corporations, the organization tax paid, and the certificate recorded in the office of the Secretary of the Commonwealth (sec. 12).

*Chase Elevator Co. v. Company*, 152 Mass. 428; 28 N. E. 300; *Hawes v. Anglo-Saxon Co.*, 101 Mass. 385; *A. M. F. Insurance Co. v. Jesser*, 87 Mass. 446.

**11. Organization Meeting.** — The various steps necessary to procure the organization of the corporation have already been set forth in sec. 3, *ante*. The organization meeting must take place within the Commonwealth. The statutory officers in Massachusetts are a president, clerk, and treasurer (secs. 9, 10, 20).

*Packard v. Company*, 168 Mass. 92; 46 N. E. 433; *Walworth v. Brackett*, 98 Mass. 98.

**12. Meetings of Stockholders and Directors.** — All meetings of stockholders must be held within the State. Directors' meetings may be held without the State if the by-laws so provide (secs. 20, 25; Laws of 1904, chap. 207).

*Sargent v. Webster*, 54 Mass. 497.

**13. Directors' Qualifications, Powers, and Liabilities.** *a. Qualifications.* — There must be at least three directors, each of whom must be a stockholder unless the by-laws otherwise provide. There are no residential requirements. The president of the corporation must be elected annually by and from the board of directors. The other officers are elected by the stockholders. Directors may be divided into classes not exceeding five, if desired (sec. 18). Under the statute the board may elect from its members an executive committee, to whom may be delegated the management of the current and ordinary business of the corporation (secs. 17, 18, 19).

*b. Liabilities.* — Directors who make oath falsely to articles of organization are jointly and severally liable to any stockholder for actual damages caused by false statements therein and which they knew to be false. Also, for debts and contracts of the corporation where they declare or assent to a dividend when the corporation is or thereby is rendered bankrupt or insolvent, to the extent of such dividend. Also, for debts contracted between the time of making or assenting to a loan to the directors and the time of its repayment, to the extent of such loan unless they voted against such dividend or the paying of such loan (secs. 34, 35). No director can be held liable for its debts or contracts unless the corporation has been duly adjudicated bankrupt or unless a judgment has been recovered against it and it has neglected for thirty days after demand made upon it to pay the amount due (secs. 14, 36).

*Cole v. Cassidy*, 138 Mass. 437; *Felker v. Company*, 148 Mass. 226; 19 N. E. 220; *Wight v. Company*, 117 Mass. 226.

**14. Stockholders' Liabilities.** — Stockholders are liable for the debts of the corporation in any event to the extent of their unpaid stock subscriptions. The statute also provides that stockholders who vote to reduce the capital stock of the corporation contrary to law shall be liable for the payment of the debts and contracts of the corporation existing at the time of such reduction to the extent of the amount withdrawn. Stockholders are also liable for all moneys due to operatives for services rendered within six months before demand made upon the corporation and its neglect or refusal to make such payment (secs. 33, 36, 39).

*Hancock National Bank v. Ellis*, 166 Mass. 414; 44 N. E. 349; *Pettibone v. Company*, 148 Mass. 411; 19 N. E. 337; *Stedman v. Eveleth*, 47 Mass. 114; *Flint v. Pierce*, 99 Mass. 68.

**15. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him, signed by the president and treasurer (sec. 26).

*Wyman v. Powder Co.*, 62 Mass. 168; *Sibley v. Bank*, 133 Mass. 515.

**16. Preferred Stock.** — One or more kinds of stock may be created under such terms and conditions as may be provided for in the agreement of association or in an amendment thereto adopted as provided by statute (secs. 27, 40).

*Am. Tube Works v. Machine Co.*, 139 Mass. 5; 29 N. E. 63.

**17. Payment of Capital Stock.** — Capital stock may be issued for cash, property, services, or expenses. If it is paid for in instalments, this fact must be set forth upon the certificate. If any stock be issued subsequent to the issue of stock authorized by the articles of association, then a certificate is prepared within thirty days after the date when said stock has been authorized, and is signed and sworn to by the president, treasurer, and a majority of the directors, setting forth: (1) Total amount of capital stock authorized. (2) The amount of stock already issued for cash, payable in instalments, and the amount paid thereon; also the amount of full-paid stock already issued for either property, services, or expenses. (3) A description of said property and the nature of said services or expenses. This certificate must be submitted to the Commissioner of Corporations. If he finds it conforms to the law, he shall so certify and endorse his approval thereon. The certificate must then be filed in the office of the Secretary of the Commonwealth, who upon payment of the proper fee shall cause it and the endorsement thereon to be recorded. The law provides that no stock shall be at any time issued unless the cash or property, services or expenses for which it was authorized to be issued has been actually received or incurred by or conveyed or rendered to the corporation, and the president, treasurer, and directors shall be jointly and severally liable to any stockholder of the corporation for actual damages caused to him by such issue (sec. 14).

**18. Books.** — The clerk is required to keep a record of all proceedings of the stockholders and board of directors. The corporation is required to keep a stock transfer book within the State. These books are open to the inspection of stockholders at all times (sec. 30).

**19. Office and Clerk.** — All corporations must have an office within the State, and must appoint a clerk who is a resident of the Commonwealth (secs. 8, 18).

**20. Reports.** — Every corporation shall annually within thirty days after the date fixed by the by-laws for the annual meeting, or within thirty days after the final adjournment of such meeting, prepare a report of the condition of the company, signed and sworn to by its president, treasurer, and at least a majority of its directors, stating the name of the corporation; location of its principal office in the Commonwealth or elsewhere in case the corporation is organized to do business wholly outside of the Commonwealth; date of its last preceding annual meeting; total amount of its authorized capital stock; amount due and outstanding and amount then paid thereon; the class, or classes, if any, into which it is divided; the par value and number of its shares; names and addresses of all the directors and officers, and the date on which the term of office of each expires; statement of the assets and liabilities of the corporation as of the date of the end of its last fiscal year. This report must be submitted to the commissioner of corporations for his approval and who shall endorse his approval thereon in conformity with the law. If the

corporation has a capital stock of \$100,000 or more, it shall be accompanied by a written statement of the affairs of such corporation. The statement of the auditor of the corporation's books must be filed with the annual report.

In addition to the foregoing, every corporation shall annually, between the first and tenth of May, make a return to the tax commissioner under oath of its treasurer, stating the name of the corporation and setting forth the following as of the first day of May of the year in which the return is made: the total amount of the capital stock of the corporation, amount issued and outstanding, and the amount then paid thereon; classes into which it is divided; par value of shares; number of its shares, and their market value, as to each class of shares, if there are two or more classes; statement of the real estate, machinery, merchandise, and other assets belonging to the corporation within and without the Commonwealth; a list of the stockholders of the corporation, their residences, the amount and class of stock (if more than one) belonging to each. If stock is pledged, the name and residence of the pledgor and pledgee must be given (secs. 45-50 inclusive). By chap. 222 of Acts of 1905, if by-laws are amended making a change in the date of the annual meeting, the commissioner of corporations must be notified thereof.

21. **Anti-Trust Statute.** — There is no anti-trust statute.

22. **Annual Franchise Tax.** — The annual franchise tax is based upon the value of the corporate franchises. This tax upon the value of the corporate franchises, after making certain deductions enumerated in the act, shall necessitate a tax levied at a rate equal to the average rate in all cities and towns in the Commonwealth during the same year, as returned by the assessors of the several cities and towns of the State, upon an amount, less said deductions, not exceeding 20 per cent in excess of the value as found by the tax commissioner, of the real estate, machinery, merchandise, and securities, which, if owned by a natural person, resident of the Commonwealth, would be liable to taxation; and the total amount of taxes to be paid by such corporation in any year upon its property to be taxed in the Commonwealth, and upon the value of its corporate franchises, shall amount to not less than one-tenth of one per cent of the market value of its capital stock at the time such assessment is made by the tax commissioner (secs. 74, 76-87 inclusive). The tax becomes due and payable on November 1st. (See also Laws of 1904, chaps. 225, 445.)

23. **Statutory Grounds for Forfeiture of Charter.** — Charters may be forfeited for usurpation of franchises or privileges not conferred by law (P. S., chap. 186, sec. 1724). Also for failure to pay annual taxes and make annual statements for two successive years (secs. 49, 78).

*Russell v. M'Lellan*, 14 Pick. 63.

24. **Amendments.** — Every corporation may, at a meeting duly called for that purpose, by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, authorize an increase or reduction of its capital stock and determine the terms and manner of the disposition of such increased stock, may authorize a change of the location of its principal office or place of business in this Commonwealth, or change of the par value of the shares of its capital stock.

It may, at a meeting duly called for the purpose, by the vote of two-thirds of all its stock, or, if two or more classes of stock have been issued, of two-thirds of each class of stock outstanding and entitled to vote, or by a larger



vote if the agreement of association so requires, change its corporate name, the nature of its business, the classes of its stock subsequently to be issued and their voting power, or make any other lawful amendment or alteration in its agreement of association or articles of organization, or sell, lease, or exchange all its property and assets, including its good-will and its corporate franchises, upon such terms and conditions as it deems expedient.

Articles of amendment, signed and sworn to by the president, treasurer, and a majority of the directors, shall within thirty days after said meeting be prepared, setting forth such amendment or alteration, and stating that it has been duly adopted by the stockholders. Such articles shall be submitted to the commissioner of corporations, who shall examine them in the same manner as the original articles of organization. If he finds that they conform to the requirements of law, he shall so certify and indorse his approval thereon, and they shall thereupon be filed in the office of the Secretary of the Commonwealth, who, upon payment of the fees hereinafter provided, shall cause them, and the endorsement thereon, to be recorded. No amendment or alteration of the agreement of association or articles of organization shall take effect until said articles of amendment shall have been filed in the office of the Secretary of the Commonwealth as aforesaid.

If an increase in the total amount of the capital stock of any corporation shall have been authorized by a vote of its stockholders in accordance with the provisions of section 40, the articles of amendment shall also set forth (1) the total amount of capital stock already authorized; (2) the amount of stock already issued for cash payable by instalments and the amount paid thereon, and the amount of full-paid stock already issued for cash, property, services, or expenses; (3) the amount of additional stock authorized; (4) the amount of such stock to be issued for cash, property, services, or expenses respectively; (5) a description of said property and a statement of the nature of said services or expenses, in the manner required by the provisions of sec. 11 of the act.

25. **Extension of Corporate Existence.** — There is no express provision for the extension of corporate existence. (See, however, sec. 40.)

26. **Dissolution.** — By a majority vote of all classes of stock entitled to vote, a petition for dissolution, to be addressed to the courts having jurisdiction in the premises, may be authorized (secs. 51-55 inclusive).

*Stone v. Framingham*, 109 Mass. 303; *Olds v. Company*, 185 Mass. 500; 70 N. E. 1022.

27. **Foreign Corporations.** — Every foreign corporation which has a usual place of business within the Commonwealth or which is engaged therein permanently or temporarily, and with or without the usual place of business therein, in the construction, erection, alteration, or repair of buildings, bridges, railroads, or structures of any kind, shall, before doing business in this Commonwealth, in writing appoint the commissioner of corporations to be its attorney upon whom all lawful process may be served. A copy of the power of attorney and a copy of the vote authorizing its execution, duly certified, must be filed in the office of the State commissioner, and a copy of its charter, a certified copy of its articles of association, and also a true copy of its by-laws, and a certificate in such form as the commissioner of corporations may require, setting forth the name of the corporation, location of its principal office, names and addresses of its president, treasurer, clerk, or secretary, or the members of its board of directors, date of its annual meeting

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and for the election of officers, amount of its capital stock authorized and due, number and par value of its shares and the amount paid in, and if any part of such payment has been made otherwise than in money, the details of such payment. This certificate must be signed and sworn to by the president and treasurer and by a majority of its directors. No foreign corporation can transact any business which is not permitted to domestic corporations by the laws of the Commonwealth.

Before transacting business within the State foreign corporations must pay \$25 for filing copies of the charter, by-laws, and certificate required by the act. They are also required to make an annual certificate of the condition of the corporation (secs. 56-70 inclusive, also sec. 91). Each year foreign corporations are required to pay an excise tax of one-hundredth of one per cent of the par value of its authorized capital stock, as stated in its annual statement of condition, this amount never to exceed \$2,000 (sec. 75).

*Broadway Nat. Bank v. Baker*, 176 Mass. 294; 57 N. E. 603; *Kennebec Ins. Co. v. Augusta Ins. Co.*, 6 Gray, 204; *American Ins. Co. v. Owen*, 15 Gray, 491; *Enterprise Brewing Co. v. Grime*, 173 Mass. 252; 53 N. E. 855; *Hayward v. Leeson*, 176 Mass. 310; 57 N. E. 656; *Bishop v. Globe Co.*, 135 Mass. 132; *Johnston v. Insurance Co.*, 132 Mass. 432; *Attorney-General v. Company (Mass.)*, 74 N. E. 467.

## MICHIGAN.

(The references below are to the Session Laws of 1903, chap. 232, unless otherwise stated.)

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Michigan is found in the Session Laws of 1903, chap. 232. Special acts are provided for banking, insurance, and railway companies. Under the act referred to above, corporations may be organized for any lawful purpose. Special provision is, however, made for mining corporations. (See Laws of 1903, chaps. 130, 233, 244; Laws of 1905, chaps. 28, 105, 232.)

**2. Incorporators.** — Three or more persons may incorporate. There are no residential requirements (Laws of 1903, chap. 232, sec. 1).

**3. Contents of the Articles of Association.** — The articles of association should contain:

*a. Name.* — Similarity of names among domestic corporations is forbidden (Laws of 1903, chap. 232, sec. 2).

*People v. Company*, 111 Mich. 405; 69 N. W. 653.

*b. Purposes.* — A company may incorporate and carry on manufacturing or mercantile business or any union of the two, or for buying, selling, or breeding live-stock, or for engaging in maritime commerce or navigation; or for purchasing, holding, or dealing in real estate; or for conducting warehouses and storage business, or for erecting and owning buildings, or for the production and supplying of gas and electricity; or for printing, publishing, and book-making, or for carrying on any other lawful business except such as is excluded by sec. 36 of the act, but a company cannot combine any two lines of business except manufacturing and mercantile, which is expressly provided for in the act (Laws of 1903, chap. 232, secs. 1, 2).

*D. D. Club v. Fitzgerald*, 109 Mich. 670; 67 N. W. 899; *Attorney-General v. Lorman*, 59 Mich. 157; 26 N. W. 311.

*c. Location of Business.* — Location of the principal place or places where the corporate operations are to be conducted (Id.).

*d. Capital Stock.* — The total authorized capital stock, which shall not be less than \$1,000 nor more than \$25,000,000 (Id. ; see also Laws of 1903, chap. 233).

*e. Number and Par Value of Shares.* — The par value of the shares must be either \$10 or \$100 (Id.).

*f. The Amount of Stock Subscriptions.* — This must not be less than fifty per cent of the authorized capital stock (Id.).

*g. Preferred Stock.* — If preferred stock is desired, this must be provided for in the articles, and an exact statement of the terms upon which the common and preferred stock are created, and the amount of each subscribed and the amount of each paid in (Id.).

*h. Capital Stock paid in.* — The amount of capital stock paid in at the time of executing the articles, which shall not be less than ten per cent of the authorized capital, and not less than \$1,000, except where the capitalization is \$2,000 or under, when it shall be twenty-five per cent thereof. Under this section the manner of payment of the capital stock is required to be set forth in detail — this to include an itemized description of the property in which the stock payment is made, with the value at which each item is taken, which valuation shall be conclusive in the absence of actual fraud (Id.).

*i. Domiciliary Office.* — The location of the office in the State of Michigan for the transaction of business (Id.).

*j. Duration.* — The corporate existence, which shall not exceed thirty years (Id.).

*k. Stockholders.* — The names of stockholders, residences, and number of shares of stock subscribed for by each must be set forth (Id.).

*l. Provisions for the Regulation of Internal Affairs.* — The articles of association may contain any provision for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting, or regulating the powers of the corporation, the directors, and the stockholders, or any class or classes of stock and stockholders, that may be deemed desirable (sec. 2).

*People ex rel. v. Company*, 111 Mich. 405 ; 69 N. W. 653.

**4. Statutory Powers.** — In addition to the statutory enumeration of the common law powers of corporations, the act gives the following extraordinary powers: The corporation may conduct its business in whole or in part, if it desires, without the State and within the United States. Also the power to issue capital stock in exchange for real and personal property, with the power to make such capital stock full-paid stock and not liable for any further call, and to relieve the holders thereof from any stockholders' liability in the absence of actual fraud in the transaction. To vote by proxy, to forfeit stock for non-payment of assessments, to enforce a lien for non-payment of debts, to cumulate votes in the election of directors, to issue preferred stock (Laws of 1903, chaps. 223, 232, secs. 10, 11, 13, 14, 20 ; see also Laws of 1901, chaps. 176, 183 ; Laws of 1905, chap. 61).

*Eakins v. Company*, 75 Mich. 568 ; 42 N. W. 982 ; *Shadford v. Company*, 130 Mich. 300 ; 89 N. W. 960 ; *White v. Rice*, 112 Mich. 403 ; 70 N. W. 1024.

**5. Procuring the Charter.** — The articles of association must be signed and acknowledged by each of the incorporators. It seems to be contemplated

by the statute that the corporation shall be organized before the articles are filed in any State or local office (see Organization Meeting, *post*, sec. 10). The statute provides that before any corporation organized to operate in the State shall commence business, the president shall cause the articles of association to be recorded in the office of the Secretary of State and in the office of the county clerk of the county in which its operations are to be carried on. If it is organized to operate outside of the State, the requirement is the same, except that the articles must then be filed in the office of the Secretary of State and in the office of the county clerk of the county in the State where the domiciliary office is located. The corporate existence, however, commences as soon as articles are subscribed and acknowledged (*Id.* secs. 2, 9).

*Carnody v. Powers*, 60 Mich. 26 ; 26 N. W. 801 ; *Whipple v. Parker*, 29 Mich. 369.

6. **Corporate Indebtedness.** — There is no limit prescribed by statute upon the creation of corporate indebtedness.

7. **Organization Tax.** — One-half of one mill on each dollar of authorized capital stock, that is, 50 cents on each thousand dollars, with a minimum fee of \$5 (Laws of 1891, chap. 2 ; Laws of 1893, chap. 79 ; C. L. of 1897, sec. 8574).

*Michigan Fem. Sem. v. Sec. of State*, 115 Mich. 118 ; 73 N. W. 131.

8. **Filing and Recording Fees.** — The Secretary of State charges a filing fee of 50 cents or a recording fee of 20 cents per folio of one hundred words, or both, according as the act under which the corporation is incorporated may provide. The Secretary of State does not issue a certificate of incorporation. His charge for issuing a certified copy of articles of incorporation is 20 cents per folio of one hundred words. For filing and recording amendments the charge is 50 cents for filing, and 20 cents per folio of one hundred words for recording. For filing annual reports, 50 cents each. The filing fee in local county offices is usually 50 cents, and the recording fees vary from 10 to 20 cents per folio of one hundred words.

9. **Commencing Business.** — Corporations may commence business as soon as the articles of association are filed and recorded in the office of the Secretary of State, and — in the case of corporations formed to carry on its business within the State — in the office of the clerk of the county in which its corporate business is to be carried on, or — in the case of non-resident corporations — in the office of the county clerk of the county where the domiciliary office is located (*Id.* sec. 9). In the case of manufacturing, commercial companies, etc., before commencing business, at least ten per cent of the capital must be paid in and fifty per cent subscribed (Laws of 1903, chap. 232, sec. 2).

*C. V. & P. Co. v. Secretary of State*, 8 Detroit Leg. News, 795 ; *Whitney v. Wyman*, 101 U. S. 392.

10. **Organization Meeting.** — Any two of the stockholders named in the articles of association may call a meeting of the stockholders for the purpose of organization, by publishing notice thereof in the manner required by statute. This notice may be waived in writing by all the stockholders specifying the time for the organization meeting. The organization meeting should be held within the State in order to avoid any possible question as to the legality thereof (*Id.* sec. 3).

11. **Meetings of Stockholders and Directors.** — The statute specifically provides that corporations may establish an office or offices for the

transaction of business without the State and within the United States, and to hold any meetings of the stockholders and directors thereat. The place must be chosen by a vote of a majority of the stockholders at a meeting duly called for that purpose, and after being fixed cannot be changed within one year, and must be certified by the directors of the corporation to the Secretary of State within two months from the time such office is located (Id. sec. 20). Cumulative voting in the election of directors is permitted (Laws of 1905, chap. 61).

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors who shall be stockholders. There are no residential requirements (Id. sec. 4). Cumulative voting is provided for (Laws of 1903, chap. 224; Laws of 1905, chap. 61).

*Anderson Carriage Co. v. Pungs*, 127 Mich. 534; 86 N. W. 1040.

*b. Liabilities.* — The directors are liable to creditors for failure to make annual reports as provided by law, for declaration of dividends when the company is insolvent, or when the payment of the same would render it insolvent, and are jointly and severally liable to the extent of three times the amount paid on the stock outstanding in their name for violation of any provision of the Business Corporation Act (Id. secs. 12, 22, 23).

*Bank v. Pierson*, 112 Mich. 410; 70 N. W. 901; *M. I. W. C. & S. Co. v. Mosher*, 114 Mich. 64; 72 N. W. 117; *Keeney v. Converse*, 99 Mich. 316; 58 N. W. 325; *Gennert v. Ives*, 102 Mich. 547; 61 N. W. 9; *Silberman v. Munroe*, 104 Mich. 352; 62 N. W. 555.

**13. Stockholders' Liabilities.** — If the capital stock of a corporation is withdrawn before the payment of the corporate debts for which such stock would have been liable, the stockholders are jointly and severally liable to any creditor to the amount that has been withdrawn. Stockholders are individually liable for all labor performed for the corporation. They are also liable to the amount of their unpaid stock subscriptions (Id. secs. 14, 21, 29).

*A. M. & G. B. Co. v. Bulkley*, 107 Mich. 447; 65 N. W. 291; *Graves v. Brooks*, 117 Mich. 424; 75 N. W. 932; *A. S. & W. Co. v. Eddy*, 130 Mich. 266; 89 N. W. 952; *McBryan v. Company*, 130 Mich. 111; 89 N. W. 683; *P. S. Bank v. Company*, 105 Mich. 535; 63 N. W. 514; *Ten Eyck v. Company*, 114 Mich. 494; 72 N. W. 362; *Kamp v. Wintermute*, 107 Mich. 447, 635; 65 N. W. 570; *A. M., etc. Co. v. Bulkley*, 107 Mich. 447; 65 N. W. 291; *Musselman v. Wright*, 107 Mich. 639; 65 N. W. 569; *Voight v. Dregge*, 97 Mich. 322; 56 N. W. 557.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by such officers as the by-laws may prescribe. The par value of shares may be either \$10 or \$100 (Id. sec. 2).

**15. Preferred Stock.** — The corporation may provide in its articles of association, or by amendment thereto, for the issuance of preferred stock, not to exceed two-thirds of the capital stock paid in, which shall be subject to redemption at par at a certain time to be fixed by the by-laws of the corporation and to be expressed in the certificate therefor. The holders of preferred stock shall be entitled to a dividend payable quarterly, half yearly, or yearly, same to be cumulative, and not to exceed eight per cent per annum. Preferred stockholders are not liable for the debts of the corporation excepting debts for labor. Preferred stockholders shall have voting power except when otherwise provided in the articles of association or amendments thereto. The right to vote is also given under certain other conditions (Id. sec. 35).

**16. Payment of Capital Stock.** — The statutes of Michigan are peculiar with respect to the manner of the payment of capital stock. Such stock may be paid for either in cash or in real or personal property. If paid in property, an itemized description thereof must be inserted in the articles of association, together with the valuation of each item taken, and this valuation is conclusive in the absence of actual fraud (Laws of 1903, chap. 232, secs. 2, 14 ; Laws of 1905, chap. 44).

**17. Books.** — Books containing accounts of the company must be kept at the office of the treasurer of the corporation within the State for the inspection of stockholders (sec. 15). Corporations having their principal place of business within the State are required to keep their stock transfer book at such office.

**18. Office and Agent.** — Every corporation must maintain an office within the State and an agent to receive process. Such office cannot be changed within one year after incorporation (Laws of 1903, chap. 232, sec. 2).

**19. Reports.** — Corporations must annually in the month of January make duplicate reports showing the condition of such corporation on the 31st day of December next preceding, or if the fiscal year of any corporation shall close within ninety days preceding said thirty-first day of December, the report may be as at the close of said fiscal year, provided flour-milling corporations shall make and deposit reports in the month of July for the year ending June 30 preceding, such report to state the amount of common and preferred capital stock authorized and the amount thereof subscribed for, and the amount thereof actually paid in in cash, and the amount thereof paid in property, the total value, as near as may be estimated, of all property owned by the corporation, the value of different items or classes of property, as follows: Real estate used in the business; real estate in use in its business, goods, chattels, merchandise, material and other similar tangible property, patent rights, copy-rights, trade-marks, and formulae, good-will, etc., and value of all credits owing to the corporation; the amount of debts of the corporation; the name and post-office address of each stockholder and the number of shares of preferred and common stock held by him at the date of such report, the name and post-office address of each officer and director of the corporation. Such reports must be signed by a majority of the board of directors and verified by the oath of the secretary of the corporation and deposited in the office of the Secretary of State within the said month of January, accompanied by a filing fee of 50 cents. The Secretary of State, after filing one of the reports in his office, is required to forward the other to the county clerk of the county in which the principal place of business of the corporation is situated, said county clerk to file the same in his office. Failure to make and file the report within the time specified, if continued in default until February 10, its corporate powers shall be suspended thereafter until it shall have filed such report. During the default directors are made liable for the debts of the corporation contracted since the filing of the last report of said corporation (Laws of 1905, chap. 194).

**20. Anti-Trust Statute.** — Under the Act of March 3, 1899, all trusts or combinations intended to prevent free competition in business are prohibited (Stat., secs. 9354 j-9354 p; Laws of 1899, chap. 255; Laws of 1905, chap. 329).

**21. Statutory Grounds for Forfeiture of Charter.** — The charter may be forfeited for entering illegal trusts or combines, for attempting to act as a corporation when not legally incorporated, or for misuser or non-user (Stat., secs. 8618, 8657, 9354 m).

**22. Amendments.** — The capital stock may be increased or decreased at

any annual meeting of the stockholders or at any special meeting thereof called for that purpose by a vote of two-thirds of the capital stock of the corporation. In voting upon the increase of the capital stock the stockholders shall have power, by the same statutory majority, to fix the value thereof, and the price at which the increase of the capital stock shall be subscribed and paid for by the stockholders, as well as the time and manner of the subscription and payment, and by the same vote to authorize the directors of the corporation to sell, at not less than the price so fixed, any part of such increase not subscribed by the stockholders after they have had a reasonable opportunity to make subscription of their proportionate shares thereof; and to make provision for calling in and cancelling the old and issuing new certificates of stock; but nothing herein contained shall in any way operate to discharge any company, which may diminish its capital stock, from any obligation or demand that may be due from said company. When a corporation shall so increase or diminish its capital stock, the president and a majority of the directors shall make a certificate thereof, which shall be signed by them and recorded and returned as provided herein for recording and returning the original articles of incorporation, and such increase or diminution shall commence and be operative from the date when such certificate is recorded in the office of the Secretary of State. Provided, that in order to entitle such certificate to be recorded it must show that at least fifty per cent of the total authorized stock, after such increase, has been subscribed, and that at least ten per cent of the total authorized capital stock has been actually paid in (sec. 8).

The articles of association may be amended in any other respect desired at any annual meeting or at any special meeting of the stockholders duly called for that purpose by a resolution adopted by a vote of two-thirds in interest of its capital stock. Such amendment shall not become operative until a copy of such resolution, signed by the president and secretary of the corporation, shall have been recorded as is provided herein for the recording of original articles of association (sec. 17).

Any corporation organized or existing under the provisions of this act may remove its place of business from any city, village, or town in this State, where it is or may be located, to any other city, village, or town in this State, by a vote of two-thirds of its stockholders in interest. But in case of a removal from one county to another, the president and secretary of such corporation shall attach to their articles of association a certificate that such corporation has thus removed, and said articles of association, together with said certificate, shall be left for record immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove, and they shall be recorded by such clerk at full length in the book kept by him for that purpose. And the president and secretary of such corporation shall, immediately upon such removal, cause a certificate thereof to be recorded in the office of the county clerk of the county from which it removes (sec. 18).

Detroit Cham. of Com. v. Sec. of State, 109 Mich. 691; 67 N. W. 807; People v. Green, 116 Mich. 505; 74 N. W. 714.

**23. Extension of Corporate Existence.** — At any meeting called for that purpose to be held within one year immediately preceding the date of the termination of the corporate existence as fixed by the articles of association, the corporation may by a vote of two-thirds of its capital stock direct the continuance of the corporate existence for a further term not exceeding thirty years. After the adoption of this resolution, the president and secretary of

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the stockholders' meeting shall make, sign, and acknowledge duplicate articles of association as in the case of the new corporation, to which shall be appended a copy of such resolution certified and verified by the oath of the secretary, which shall be filed and recorded as in the case of a new corporation (Id. sec. 33; as amended by Laws of 1905, chap. 328).

24. **Annual Franchise Tax.** — There is no annual franchise tax in force in Michigan.

25. **Dissolution.** — Corporations may be dissolved only upon application to the courts (Stats., secs. 4161 b, 4161 d 7–4164 inclusive, 8174, 8211 a; Laws of 1905, chaps. 10, 96).

26. **Foreign Corporations.** — Foreign corporations must file a certified copy of their articles with the Secretary of State and evidence of appointment of agent to receive process. Must pay franchise fee of one-half of one mill on each dollar to be determined by the Secretary of State upon the proportion of capital stock represented by its business in Michigan, but which fee shall never be less than \$25 (Laws of 1901, chap. 206, as amended by Laws of 1903, chap. 34). At the time articles are filed the corporation must make and file a statement with the Secretary duly sworn to by at least two officers of the corporation setting forth the location of its offices in Michigan; names and addresses of the officers and agents in charge of its business in Michigan, value of property owned and used by the company; aggregate amount of business transacted by the company therein and the capital stock of such corporation invested in Michigan. Foreign corporations must also file an annual report with the auditor-general, duly sworn to by its president or other officer (C. L. of 1899, sec. 7106). Foreign corporations must file the same annual report as is required of domestic corporations (Laws of 1905, chap. 194).

*People v. Hawkins*, 106 Mich. 479; 64 N. W. 736; *Rough v. Breitung*, 117 Mich. 48; 75 N. W. 147; *Wilcox Cordage Co. v. Mosher*, 114 Mich. 64; 72 N. W. 117; *Holder v. Company*, 169 U. S. 81; *M. P. Co. v. Wilkinson*, 105 Mich. 57; 62 N. W. 1119; *W. S. Co. v. Sec. of State*, 115 Mich. 234; 73 N. W. 197; *Seamans v. Company*, 105 Mich. 400; 63 N. W. 408.

## MINNESOTA.

(The references cited below are to the General Statutes of 1894, unless otherwise stated.)

There is in process of preparation a complete revision and codification of the Business Corporation Laws of the State which will be ready for distribution to the public in March, 1906.

1. **Statute under which Business Corporations may incorporate.** — The Business Corporation Act of Minnesota is found in the General Statutes of that State (1894), Title 2, chap. 34, secs. 2593–2837, 3391–3436, 5889–5911. Special attention is called to the fact that Title 2, chap. 34, really embraces three separate incorporation acts, — one being a general act and the others being applicable to mining and manufacturing companies. Special acts are provided for banking, building and loan, electric, insurance, plank roads, turnpike, railway, safe deposit and trust, bridge, telegraph, telephone, water, and eleemosynary corporations. (See secs. 2794, 2805; Laws of 1905, chap. 276.)

2. **Incorporators.** — Any number of persons not less than three. There are no residential requirements (secs. 2794, 2805, 2827).

*State v. Critchett*, 37 Minn. 13; 32 N. W. 787.



**3. Contents of the Articles of Incorporation.** — The articles must set forth :

*a. Corporate Name.* — Similarity of names among domestic corporations is forbidden.

*b. Nature of the Business.* — The Secretary of State permits the insertion of any number of purposes in the articles not covered by special act.

*c. Principal Place of Business.* — The location of the principal place for the transaction of the corporate business must be set forth.

*d. Duration.* — Time of the commencement and period of existence, which cannot exceed thirty years (secs. 2802, 2826).

*e. Capital Stock.* — The amount of capital stock and how paid in. The authorized capital cannot be less than \$10,000 (secs. 2797, 2830; Laws of 1901, chap. 347).

*f. Corporate Indebtedness.* — The highest amount of indebtedness or liability which the corporation shall at any time incur.

*g. Incorporators.* — The names and residences of the incorporators must be set forth.

*h. Directors.* — The names and residences of the first board of directors, and in what officers the government of the corporation and the management of its affairs shall be vested, and when the same shall be elected.

*i. Par Value of the Shares.* — The number and par value of the shares of the capital stock. This must not be less than \$1 nor more than \$100 (secs. 2594, 2796; Laws of 1897, chap. 249; Laws of 1901, chap. 99; sec. 2797, as amended by Laws of 1901, chap. 347). Special provision is made with reference to articles of incorporation of mining and manufacturing corporations (secs. 2827, 2828).

*State v. Company*, 40 Minn. 213; 41 N. W. 1020.

**4. Statutory Powers.** — In addition to the statutory enumeration of the common law powers of corporations, the act gives the following extraordinary powers : The right to enforce a lien upon the stock of its members for all debts due from them to the corporation; the power to hold real and personal property as shall be necessary for the business of the corporation, or such as may be taken in payment of or security for debts. Express power is conferred upon the directors to meet without the State, and the corporation is empowered to establish offices without the State for the transaction of its business. If a majority of the stockholders shall so elect, the corporation may take, acquire, and hold stock in other corporations. Also to vote by proxy (secs. 2794, 2795, 2798, 2799, 2816, 2817, 2833, 2834, 2835, 3412). Also to issue preferred stock and to forfeit stock for non-payment of assessment (secs. 3414, 3415). Also to classify directors (sec. 3407).

*Blien v. Rand*, 77 Minn. 110; 79 N. W. 606; *N. T. E. Co. v. Company*, 76 Minn. 334; 79 N. W. 315.

**5. Procuring the Charter.** — The articles should be signed and acknowledged by each of the incorporators. The articles must then be published in a legal newspaper published at the capital of the State or in the county where the corporation is organized. Two publications are sufficient. Upon filing an affidavit of proof of such publication in the office of the Secretary of State the persons named in such articles thereupon become a corporation. The articles of incorporation must be recorded in the office of the register of deeds of the county where the principal place of business is to be located as well as

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in the office of the Secretary of State. In the case of mining and manufacturing corporations the articles are required to be executed in duplicate, one of which is deposited for record in the office of the register of deeds in the county where the corporation shall establish its principal office, and the other with the Secretary of State, and upon being so deposited the corporation is deemed to exist for the purposes specified in its articles. There must be filed with the articles with the Secretary of State a duplicate receipt of the State Treasurer showing the payment of the organization tax required by law. This provision does not apply to any manufacturing corporation whose articles provide that its functions shall be limited to manufacturing and to business essential thereto, or to mining any stone quarry, or the quarrying, manufacturing, or marketing of any kind of stone, or for raising or improving live-stock, or for cultivating or improving farms, gardens or horticultural lands, growing sugar beets or for canning fruits or vegetables, or to local telephone companies connecting towns or villages of less than two thousand inhabitants (secs. 2593, 2595, 2796, 2813, 2829; Laws of 1901, chap. 99; Laws of 1903, chap. 300). The Secretary of State issues a certificate of incorporation in the form provided by statute (sec. 3344).

*Finnegan v. Noerenberg*, 52 Minn. 239; 53 N. W. 1150.

6. **Corporate Indebtedness.** — There is no limit upon the creation of corporate indebtedness, save as to certain classes of corporations: to wit, those empowered to take private property for public uses (sec. 2722).

7. **Organization Tax.** — Fifty dollars for the first fifty thousand dollars of the capital stock and an additional five dollars for every additional ten thousand dollars of its capital stock. Manufacturing corporations, when their articles confine their business exclusively to manufacturing, are not required to pay incorporation fees (Laws of 1901, chap. 206).

8. **Filing and Recording Fees.** — Filing fees in the office of the Secretary of State, 15 cents per folio. Cost of certified copy of articles of incorporation, 50 cents per folio. For issuing certificate of incorporation, \$1. Filing affidavits and proofs of publication, free. Filing and recording fees in local county offices average about \$3. Cost of publishing articles, about \$15. A discount of usually 50 per cent on this amount can be obtained by the attorneys. Cost of filing certificate preliminary to the commencement of business in the office of the Secretary of State and with the register of deeds, about \$1.

9. **Commencing Business.** — Corporations may commence business as soon as the articles of incorporation are filed and recorded in the office of the Secretary of State and in the office of the register of deeds of the county where the principal place of business is located, and as soon as the articles are published as required by law, and an affidavit in proof thereof filed in the office of the Secretary of State (secs. 2594, 2796).

10. **Organization Meeting.** — Organization meeting must be held within the State in the absence of any statute expressly authorizing the holding of such meeting outside of the State. (See, however, secs. 2808, 2833, 3407, 3408.)

11. **Meetings of Stockholders and Directors.** — Stockholders as well as directors may meet and transact business without the State if the by-laws so provide; otherwise the meetings must be held within the State (secs. 2808, 2833, 3407, 3408; see also Laws of 1903, chap. 152).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors and not more than fifteen. There are no resi-

dential requirements. The board may by a resolution divide the directors into three classes, one-third to be elected annually (secs. 2809, 2831, 3407).

*b. Liabilities.* — Directors are liable for the declaration and payment of unlawful dividends. They are also liable if they suffer the corporate funds or property to be wasted or lost through gross negligence or inattention to duty. Directors and officers may be removed by the district court of the county in which is located the principal business of the corporation, or be suspended upon proof of abuse of trust or gross misconduct (secs. 2793, 2800, 2822, 2823, 5895, 6699, 6700, 6764, 6765).

**13. Stockholders' Liabilities.** — Stockholders in all classes of corporations are liable in any event to the amount of stock subscribed by them and unpaid. Stockholders of all ordinary business corporations that may be organized under the General Act, except those organized to carry on exclusively a manufacturing or mining business, are liable to the amount of stock held or owned by them. This is a constitutional liability not requiring any statute to put it in effect, the Supreme Court having held it to be self-executing. Stockholders in corporations organized to carry on an exclusively manufacturing or mechanical business are only liable to the extent of their unpaid stock subscriptions (Cons., Art. X. secs. 3, 2600). Stockholders are also liable to the extent of capital illegally withdrawn from the corporation and received by them (sec. 2822). They are also liable for a failure on the part of the corporation to comply substantially with the provisions with reference to organization and publicity (sec. 2600).

Wallace v. Company, 70 Minn. 321; 73 N. W. 189; Frost v. Company, 57 Minn. 325; 59 N. W. 308; P. F. Co. v. Company, 64 Minn. 386; 67 N. W. 217; Farnsworth v. Robbins, 36 Minn. 369; 31 N. W. 349; S. M. Co. v. Company, 81 Minn. 294; 84 N. W. 109.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by such officers as the by-laws may prescribe (sec. 3416). The par value of the shares may be any amount not less than \$1 nor more than \$100 (Laws of 1901, chap. 347; see also sec. 2830, where par value of shares of mining and manufacturing companies is fixed at not less than \$10 and not more than \$100 each; see also sec. 2806).

**15. Preferred Stock.** — Corporations having capital stock divided into classes, unless specifically authorized, shall not issue any shares for a less amount to be actually paid in on each share than the par value of the shares as issued; provided that railroad, navigation, and manufacturing corporations and corporations for buying, holding, improving, selling, and dealing in lands, tenements, hereditaments, real, mixed, and personal property, created or organized under this chapter, or under any charter or special act of incorporation heretofore passed, shall have power to create, issue, and dispose of such amount of special, preferred, or full-paid stock of the capital stock of such corporation, as may be deemed advisable by the board of directors of such corporation. Provided, that any corporation may by its articles of incorporation or by any amended articles of its articles of incorporation, provide for special, preferred, and common stock of the capital stock of such corporation; and any corporation heretofore or hereafter organized, without changing its articles of incorporation, may issue its capital stock as a part special and a part preferred and a part common, or a part common and a part special or preferred by direction of its board of directors when so authorized by a majority of its

stockholders at its annual meeting, or at a meeting called for that purpose; and said board of directors when so authorized by said meeting of said stockholders may give such preferences as it may deem best to such special or preferred stock, or such special and preferred stock (sec. 3415).

16. **Payment of Capital Stock.** — Stock is payable in money or money's worth. Stock cannot be issued for a less amount to be actually paid in on each share than the par value of the shares so issued. The foregoing provision does not apply to railroad, navigation, manufacturing corporations and corporations organized for dealing in real estate. This latter class are authorized to create, issue, and dispose of such amount of special, preferred, or full-paid stock as the directors may deem advisable (sec. 3415).

17. **Books.** — Books of account shall be kept, and shall at all reasonable times be open to inspection, in the county where such corporation is located or at the office of the treasurer within the State (secs. 2599, 2800, 2818, 3429 e).

18. **Office and Agent.** — Every corporation must maintain an office within the State, and must at all times have an agent within the State upon whom process may be served (secs. 2801, 2833, 3407).

19. **Reports.** — No reports are required to be published. The directors are, however, required to make a statement of the accounts of the corporation at least once a year to the stockholders.

20. **Anti-Trust Statute.** — Under the Act of April 10, 1901, all pools, trusts, and conspiracies for certain unlawful purposes are declared illegal (Laws of 1901, chap. 194; see also Laws of 1899, chap. 359).

21. **Statutory Grounds for Forfeiture of Charter.** — The charter may be forfeited for violation of law, for misuser and non-user of corporate powers. It may also be forfeited if the charter was procured upon some fraudulent suggestion, or the concealment of material facts by the persons incorporating, or some of them, or with their knowledge and consent (sec. 5692). The charter may be forfeited also if it remains insolvent for one year, or for one year refuses to discharge its debts, or for one year suspends its lawful business (sec. 5899). Also for violation of Anti-Trust Acts.

*M. C. R. Co. v. Melvin*, 21 Minn. 339.

22. **Amendments.** — The charter may be amended by a resolution of the board of directors ratified by a majority of the stockholders in the following respects: Changing the name or the nature of the business, the principal place of transacting the same, changing the amount of capital stock and how to be paid in, the amount of corporate liability, and the number and amount of the shares of the capital stock. Also the number of directors and their term of office and the manner of their election. Any corporation so amending its original articles shall cause to be prepared a certificate stating the time when and the respect in which the said articles were amended, which certificate shall be subscribed and sworn to by the president or other chief executive officer and also by the secretary of the corporation, and shall be filed, published, and recorded in the same manner provided by law for the filing, recording, and publication of such original articles (secs. 2595, 2738, 2803, 2804; Laws of 1901, chap. 245).

In the case of manufacturing corporations the act provides that every such corporation may increase its capital stock and number of shares therein at any meeting of the stockholders especially named for that purpose (sec. 2806). When such increase is made, the president and directors are required within thirty days thereafter to make a certificate thereof, which shall be signed,

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deposited, and recorded in the same manner as is required in the case of the original incorporation of such corporations (secs. 2651, 2652).

23. **Extension of Corporate Existence.** — Corporations may renew the term of their corporate existence for a term not exceeding the original period of its existence by adopting a resolution expressing such renewal by a two-thirds vote of its stockholders at a meeting duly called for that purpose, and by filing and publishing the same in the same manner as is provided for original articles of incorporation (Laws of 1901, chap. 207; Laws of 1903, chap. 332).

24. **Annual License Tax.** — There is no annual license tax.

25. **Dissolution.** — Corporations may be dissolved upon application to the courts (secs. 3430, 3435; Laws of 1903, chap. 313; Laws of 1905, chap. 128).

26. **Foreign Corporations.** — Every foreign corporation before doing business within the State must file in the office of the Secretary of State a copy of its charter or articles of incorporation duly certified and authenticated. They must also maintain an office within the State and appoint an agent resident therein upon whom service of process may be had (Laws of 1899, chaps. 69, 70). Foreign corporations are taxed at the same rate as domestic corporations, on their property located within the State.

*State v. Company*, 43 Minn. 17; 44 N. W. 1032; *Heileman Co. v. Peimeisl*, 85 Minn. 121; 88 N. W. 441; *R. I. P. Co. v. Peterson* (Minn.), 101 N. W. 616.

## MISSISSIPPI.

(The references cited below are to chap. 25 of the Annotated Code of 1892, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Mississippi is found in the Annotated Code of 1892, chap. 25, secs. 832–860 inclusive. Special acts are provided for railway and insurance corporations.

2. **Incorporators.** — There must be at least two incorporators. There are no residential requirements (sec. 833).

3. **Contents of the Charter.** — The charter must contain:

a. **Purposes.** — Any number of purposes not including those for which corporations can be organized only under special acts may be inserted.

b. **Incorporators.** — The names of the corporators must be inserted.

c. **Name.** — Similarity of names is not forbidden.

d. **Corporate Powers.** — The powers to be exercised must be set forth.

e. **Duration.** — This cannot exceed fifty years.

f. **Capital Stock.** — There is no maximum or minimum amount of capital stock fixed by law for corporations. There is an implied limit by reason of the provision that no corporation, except manufacturing companies and banks, may hold real and personal estate exceeding \$250,000 in amount. Manufacturing companies and banks may purchase and hold property to the amount of \$1,000,000.

g. Any provisions that may be desired for the regulation of the internal affairs of the corporation (sec. 833).

4. **Statutory Powers.** — The act enumerates the common law powers of corporations. In addition thereto it limits, except in the case of manufacturing companies and banks, the amount of real and personal property necessary and proper for its purposes to \$250,000 in amount. Corporations are

forbidden to own or purchase the capital stock of other corporations or to acquire the franchise, plant, or equipments of other corporations. Corporations are expressly given power to execute bonds in suits in which the corporation is interested (sec. 836). Voting by proxy is permitted; also forfeiture of stock for non-payment of assessments (secs. 836, 837, 838, 843). May cumulate votes in election of directors (sec. 837).

*Greenville Compress & Warehouse Co. v. Company*, 70 Miss. 669; 13 So. 879.

**5. Procuring the Charter.** — The charter must be signed and acknowledged by each of the incorporators. It must then be published for three consecutive weeks in a newspaper published at the domicile of the corporation. After publication it must be submitted for approval to the governor, who is required to take advice of the Attorney-General as to the constitutionality and legality of the provisions of the charter. If the charter is approved, the governor so endorses such approval thereon, and the Secretary of State shall affix the State seal thereto. Upon the payment of the organization tax and upon recording the charter in the office of the Secretary of State the corporate existence commences. The law provides that it shall not be a defence to any suit against the corporation that there was a defect or informality in the organization thereof (secs. 833, 835). The charter must be recorded also in the office of the clerk of the chancery court of the county in which the corporation does business. Collateral inquiry into the legality of corporate existence is forbidden by statute (secs. 833, 835, 841).

**6. Corporate Indebtedness.** — Manufacturing and trading companies are not permitted to contract debts to exceed the amount of their capital stock paid in. No loan of money can be made by the corporation to a stockholder (secs. 851, 853).

*Fargason v. Company*, 78 Miss. 65; 27 So. 877.

**7. Organization Tax.** — Capital stock not exceeding \$10,000, \$20; between \$10,000 and \$30,000, \$40; between \$30,000 and \$50,000, \$60; exceeding \$50,000, one-tenth of one per cent, but no fee to exceed \$250 (Laws of 1900, chap. 45).

**8. Filing and Recording Fees.** — There is no filing or recording fee other than the organization tax to be paid to the Secretary of State. For certified copy of a domestic charter, \$10 (Laws of 1900, chap. 45). Publication fee about \$10.

**9. Commencing Business.** — Corporations may commence business as soon as the charter is duly executed, published, and approved by the governor, the organization tax paid, and the charter recorded in the office of the Secretary of State and with the clerk of the chancery court of the county in which the corporation does business (secs. 833-835 inclusive).

**10. Organization Meeting.** — The organization meeting must be held within the State. Unless the incorporators sign an agreement fixing the time and place for the organization meeting of the corporation, a notice signed by one or more persons named in the charter must be published in some business newspaper for at least ten days before the time appointed for such meeting. At this meeting the by-laws must be adopted and the board of directors chosen. Immediately after the adjournment of the organization meeting the board of directors elected thereat should meet and elect such officers as may be provided for in the by-laws (sec. 836).

**11. Meetings of Stockholders and Directors.** — Stockholders' meetings

must be held within the State. Directors' meetings may be held without the State if the by-laws so provide (sec. 837).

*Thompson v. Company*, 68 Miss. 423; 9 So. 821.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — The corporation may have any number of directors desired. There are no residential requirements. No person can serve on the board of directors who is engaged or interested in a competing business without the consent of a majority in interest of the stockholders thereof (sec. 837).

*b. Liabilities.* — Directors are jointly and severally liable for the payment of dividends when the company is insolvent or when such payment would render it insolvent. Directors are also liable for illegal withdrawal of capital stock. Officers and directors are jointly and severally liable for permitting the loan of money to stockholders. They are also liable in case debts are contracted in excess of the amount of capital stock paid in (secs. 851, 852, 853).

**13. Stockholders' Liabilities.** — Stockholders are liable in any event to the amount of stock subscribed by them and unpaid (secs. 844, 850).

*Scott v. Windham*, 73 Miss. 76; 16 So. 206.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by such officers as the by-laws may prescribe. The par value of shares may be any amount.

**15. Preferred Stock.** — The act does not provide in terms for the issuance of preferred stock.

**16. Payment of Capital Stock.** — The statute seems to contemplate that stock must be paid for either in money or money's worth. The act provides that a note, obligation, or security of any kind given or transferred by any subscriber for stock shall not be considered, taken, or held as payment of any part of the capital stock of the company (secs. 844, 850).

*Fargason v. Company*, 78 Miss. 65; 27 So. 877.

**17. Books.** — There are no statutory regulations concerning books.

**18. Office and Agent.** — The statute by implication would seem to require the maintenance of a domiciliary office within the State.

**19. Reports.** — No reports to State officials are required.

**20. Anti-Trust Statute.** — All pools, trusts, or combinations for certain designated purposes are declared illegal (chap. 88, Laws of 1900).

*Woodberry v. McClurg*, 78 Miss. 831; 29 So. 514.

**21. Statutory Grounds for Forfeiture of Charter.** — The charter may be forfeited for entering unlawful trusts or combines or for misuse or abuse of its powers (Act of March 12, 1900, secs. 3520-3529; see also sec. 838).

**22. Amendments.** — The act provides in the case of amendments as follows: Every corporation desiring an amendment of its charter shall make publication in the same manner as is required in the case of original charters, setting forth at length in such publication the nature and extent of the amendment desired, and the covenant that the Attorney-General may grant the same. Every amendment shall be recorded at length in the office of the Secretary of State, and in the office of the clerk of the chancery court of the county in which the corporation does business (secs. 834, 835).

**23. Extension of Corporate Existence.** — The act refers to renewals of charters, but contains no express provision with reference thereto (sec. 834).

24. **Dissolution.**—Corporations may be dissolved upon application to the courts (secs. 847, 848).

25. **Foreign Corporations.**—Every foreign corporation before doing business within the State must file in the office of the Secretary of State a copy of its charter or articles of incorporation duly certified and authenticated. The same must be duly certified by the president, secretary, or other chief executive officer of such corporation, and the corporate seal attached thereto. Fee of Secretary of State for filing charter, \$15 (sec. 849; Laws of 1900, chap. 45).

*Williams v. Bank of Commerce*, 71 Miss. 858; 16 So. 238.

## MISSOURI.

(The references cited below are to the Revised Statutes of 1899, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.**—The Business Corporation Act of Missouri is found in the Revised Statutes of 1899, secs. 948–1541 inclusive. Special acts are provided for banking, bond, investment, booming and rafting, savings and loan, building, railway, street railway, telegraph, telephone, and trust companies. (See also Laws of 1905, p. 97.)

2. **Incorporators.**—Any number not less than three. There are no residential requirements (sec. 1312, as amended by the Session Laws of 1901, p. 91).

3. **Contents of the Articles of Incorporation.**—The articles must set forth :

a. **Name.**—Similarity of names is forbidden. When the name of a person or firm is assumed, it must designate the nature of the business to be carried on and end with "company" or "corporation" (secs. 959, 1312).

b. **Domiciliary Office.**—The name of the city or town in the county in which the corporation is to be located (sec. 1312).

c. **Capital Stock.**—The amount of capital stock, the number of shares into which it is to be divided, and the par value thereof, together with a statement that the same has been *bona fide* subscribed and one-half thereof actually paid up in lawful money of the United States, and in the custody of the persons named as the first board of directors. Capital stock cannot be less than \$2,000 nor more than \$10,000,000. The par value of the shares may be any amount (secs. 1312, 1320; Laws of 1903, p. 124).

d. **Stockholders.**—The names and places of residence of the stockholders and the number of shares subscribed by each (sec. 1312).

e. **Board of Directors.**—Number of directors and names of the board for the first year. There must be not less than three nor more than thirteen. Three of these must be citizens and residents of the State, and all must be stockholders (secs. 973, 1022, 1312, 1320; Laws of 1903, p. 124).

f. **Duration.**—The number of years the corporation is to continue, which must not exceed fifty years (sec. 1312; Laws of 1903, p. 124).

g. **Purposes.**—The statute specifies eleven classes of corporations which may be organized under the General Act (sec. 1319).

h. **Preferred Stock.**—If preferred stock is desired, the articles must set out the amount thereof, the number of shares thereof, the names of the subscribers therefor, the number of shares subscribed by each person, and the preferences, priorities, qualifications, and character thereof as provided in



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sec. 1332 of the Revised Statutes of Missouri, 1899, as amended by Laws of 1901, p. 91.

*State v. McGrath*, 92 Mo. 355; 5 S. W. 29.

4. **Statutory Powers.** — The Missouri statutes enumerate the common law powers of corporations, and also confer the following additional powers: Permitting the use of proxies; authorizing cumulative voting for directors; allowing directors to forfeit stock for non-payment of assessment; permitting the classification of directors; allowing the issuance of preferred stock, and the issuance of stock for services or property (secs. 953, 961, 962, 971, 1322; Laws of 1903, pp. 114, 124). Corporations engaged in a similar line of business may consolidate (sec. 1334). Bonds may be issued and afterwards converted into stock if desired (sec. 1337).

5. **Procuring the Charter.** — The articles must be signed and acknowledged by the incorporators. They must then be recorded in the office of the recorder of deeds of the county or city where the corporation is to be located. A certified copy of the articles must then be filed with the Secretary of State, and the corporate existence commences from the time of the filing of such copy. A certificate by the Secretary of State that such corporation has been duly organized is evidence of the corporate existence of the corporation. A certified copy of such certificate must be filed and recorded in the office of the recorder of deeds of the county in which the corporation is organized. Before the articles can be filed in the office of the Secretary of State the organization tax must be paid to the State, and a duplicate receipt of the State Treasurer showing the payment of such tax must be filed with the Secretary of State (secs. 955, 956, 1313; Laws of 1903, pp. 123, 125).

*Hurt v. Salisbury*, 55 Mo. 310; *Com'rs v. Shields*, 62 Mo. 247; *Granby Co. v. Richards*, 95 Mo. 106; 8 S. W. 246; *Hyatt v. Van Riper* (Mo.), 78 S. W. 1043.

6. **Organization Tax.** — Fifty dollars for the first fifty thousand dollars or less of capital stock, and \$5 for each additional ten thousand dollars.

7. **Filing and Recording Fees.** — The payment of the organization tax covers the filing and recording fees in the office of the Secretary of State. The Secretary of State issues a certificate of incorporation for which he charges \$1.50; for issuing a certified copy of articles of incorporation the charge is 10 cents per hundred words for copying and \$1 for certificate. The recording fees in local county office is 8 cents per hundred words and 10 cents for indexing.

8. **Corporate Indebtedness.** — There is no statutory limitation upon the amount of debts a corporation may contract, except that the bonded indebtedness must not exceed the amount of authorized capital (sec. 962).

9. **Commencing Business.** — As soon as the certificate of organization is issued by the Secretary of State and a certified copy thereof filed in the office of the recorder of deeds, the company may at once commence business. As a preliminary to procuring the charter one-half of the capital stock must first be paid in and the balance subscribed for (sec. 1312).

*Shepard v. Drake*, 61 Mo. Ap. 134; *Reinhard v. Mining Co.*, 107 Mo. 616; 18 S. W. 17; *St. J. & I. R. R. Co. v. Shambaugh*, 106 Mo. 557; 17 S. W. 581; *Q. C. F. & C. Co. v. Crawford*, 127 Mo. 356; 30 S. W. 163.

10. **Organization Meetings.** — Must be held within the State.

*Camp v. Byrne et al.*, 41 Mo. 525; *N. M. R. R. Co. v. Winkler*, 33 Mo. 354.

**11. Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State. All meetings of directors, other than boards of mining and railway corporations, must be held at the general office of the corporation within the State (sec. 973; Laws of 1903, p. 124).

*O. & M. R. R. Co. v. McPherson*, 35 Mo. 13; *M. L. M. & S. Co. v. Reinhard*, 114 Mo. 218; 21 S. W. 488.

**12. Directors' Qualifications, Duties, and Liabilities.** — There must be not less than three nor more than thirteen directors. Three of them must be citizens and residents of the State, and each must be a shareholder. Directors may be classified if desired. Cumulative voting for directors permitted (secs. 971, 973, 1022, 1312, 1320; Laws of 1901, p. 89; Laws of 1903, p. 124). Inspectors of election are provided for (secs. 947, 948).

*Hap v. Mill Co.*, 39 Mo. Ap. 453.

**Liabilities.** — Directors are liable for knowingly declaring and paying dividends when the corporation is insolvent or which will render it insolvent. This liability is a joint and several one, and extends to debts of the corporation then existing or thereafter contracted. Directors voting against the declaration of such dividends are not liable (secs. 983, 1321). They are also liable for making loans to stockholders (sec. 1323).

**13. Stockholders' Liabilities.** — Stockholders are liable for corporate debts to the extent of their unpaid stock subscriptions (Cons., Art. XII. sec. 9; sec. 985).

*Ramsey v. Mfg. Co.*, 116 Mo. 313; 22 S. W. 719; *Ollesheimer v. Mfg. Co.*, 44 Mo. Ap. 172.

**14. Stock Certificates.** — Each stockholder is entitled to have a certificate issued to him, signed by such officers as the by-laws may provide. Par value of shares may be any amount.

**15. Preferred Stock.** — Preferred stock may be issued by inserting provision therefor in the original articles of agreement or by amendment thereto, or by the vote of all the stockholders of the corporation. Dividends not exceeding eight per cent per annum may be made on the preferred stock out of the net yearly income, and whether such dividends shall be made cumulative or not, and what priority, if any, any class of such preferred stock shall have over the common stock or other preferred stock out of the assets of the corporation in case of its dissolution or liquidation may be provided for.

*Winscott v. Investment Co.*, 63 Mo. Ap. 367.

**16. Payment of Capital Stock.** — Stock can only be issued for money paid, labor done, or property actually received. All fictitious increase of stock is void (Cons., Art. XII. secs. 8; see also secs. 962, 1323).

*Schickle v. Watts*, 94 Mo. 410; 7 S. W. 274; *Grocer Co. v. Crow*, 36 Mo. Ap. 288; *Garrett v. Mining Co.*, 113 Mo. 330; 20 S. W. 965; *McDaniel v. Harvey*, 51 Mo. Ap. 198; *Berry v. Rood*, 168 Mo. 316; 67 S. W. 644.

**17. Books.** — A transfer book and stock register shall be kept at the general office of the corporation, which shall be open to inspection of stockholders during usual business hours for thirty days previous to an election of directors (sec. 966). The books and records of the proceedings of such corporation shall be kept open for the inspection of all persons interested (secs. 1322-1326).

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**18. Office.** — Every domestic corporation is required to keep an office within the State (sec. 1022).

*Cleaton v. Emery*, 49 Mo. Ap. 345; *M. L. M. & S. Co. v. Reinhard*, 114 Mo. 218; 21 S. W. 488.

**19. Reports.** — Corporations shall annually, on or before July 1, report to Secretary of State the location of the principal office, name of president and secretary, amount of capital stock, both subscribed and paid up, par value of stock and actual value of stock at the time, cash value of all the personal property and real estate within this State on June 1st preceding, and amount of taxes paid by the corporation in this State for year last preceding the report (sec. 1018; see also Laws of 1905, p. 71).

**20. Anti-Trust Statute.** — All combinations to limit prices of certain designated articles are by statute declared to be illegal (Laws of 1901, chap. 148). An anti-trust affidavit is required to be made out and sworn to by the president, secretary, or treasurer of each corporation on or before July 1st of each year (sec. 8973).

**21. Statutory Ground for Forfeiture of Charter.** — The charter may be forfeited for entering illegal trusts or combinations; also for failure to maintain an office within the State for six months consecutively; also for abuse, non-use, or misuse of corporate rights and privileges (secs. 1022, 8971).

**22. Extension of Corporate Existence.** — Corporate existence may be extended for a further period of fifty years by complying with the law in respect thereto (sec. 972). Corporations may also reincorporate under the old name if they so desire (sec. 1008).

**23. Annual Franchise Tax.** — There is no annual franchise tax.

**24. Amendments.** — To increase the capital stock requires the consent of all persons holding the larger amount in value of the stock, such consent to be obtained at a meeting of the stockholders called for that purpose. Sixty days' notice of the time and place of such meeting to be given by publication at least once a week in some newspaper published in the county wherein the principal office of the corporation is located, the first insertion to be not less than sixty days, or else to be not less than one nor more than six days previous to the date on which said meeting shall be held. The notice must also state the amount of the proposed increase of stock. Upon the stock of any corporation being increased, the change and amount of such increase of stock shall be certified by the proper corporate officers to the Secretary of State, who shall record the same (secs. 962-964 inclusive).

To change the name or number of directors requires action by a majority of the stockholders taken at a meeting called for that purpose. The action so taken must be set forth in an affidavit of the president and secretary of the corporation, setting forth the name adopted or the number of directors fixed, together with the date on which said change of name or number of directors was voted by the stockholders of the corporation. This affidavit must be first recorded in the office of the recorder of deeds of the county in which the corporation is located and then afterwards filed with the Secretary of State (sec. 971; Laws of 1903, p. 114).

Corporations may, at a stockholders' meeting called and held in the same manner provided for in the increase of capital stock, reduce the par value of its shares of stock and correspondingly increase the number thereof by vote of a majority of the stock of the corporation. The same certificate of such change must be made out, recorded, and filed as is provided in the case of

change of name or change in the number of directors (sec. 971; Laws of 1908, p. 114).

The Manufacturing and Business Company Act contains a provision for changing the corporate business in the following manner, to wit: A meeting of the stockholders must be called by the directors upon notice signed by at least a majority of the directors and published in a newspaper in the county where the principal place of business of the corporation is located for a period of sixty days. This notice must be also sent to each stockholder by post at his usual place of residence at least sixty days previous to the date fixed upon for holding such meeting and specifying the object of the meeting, the time and place when and where such meeting is to be held, and the amount to which the stock is to be increased or diminished or the business changed. An affirmative vote of all persons holding the larger amount in value of all the shares of stock is necessary to effect the amendment. The published notice provided for as to the fact that it shall be published at least once a week and the first publication must be at least sixty days before the date of said meeting. A statement of the proceedings at the stockholders' meeting must be prepared, showing compliance with the law, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of assets and liabilities of the corporation and the amount to which the capital stock shall be increased or diminished. This statement must be acknowledged by the chairman and recorded in the same manner as is provided in the case of original charters (sec. 1329; see also Laws of 1903, p. 114).

*Ollsheimer v. Mfg. Co.*, 44 Mo. Ap. 122; *N. S. H. Co. v. Cook*, 178 Mo. 189; 77 S. W. 559.

25. **Dissolution.** — A corporation may be dissolved only on application to the courts for cause shown by a majority vote of the stockholders or without cause shown by a two-thirds vote thereof (sec. 977).

26. **Foreign Corporations.** — Foreign corporations, in order to transact business within the State, must file in the office of the Secretary of State a copy of their charter, duly authenticated by the proper authority, together with a sworn statement under the corporate seal setting forth the business of the corporation which it is engaged in carrying on or which it proposes to carry on in the State; and the principal officer or agent in Missouri must make and forward to the Secretary of State, with the affidavits required, a statement sworn to, of the proportion of capital stock which is represented by its property located and business transacted in Missouri, and setting forth the location of its principal office within the State where legal service may be obtained upon it. The corporation is required to pay into the State treasury, upon the proportion of its capital stock represented by its property and business in Missouri, incorporating taxes and fees equal to those required of similar domestic corporations, with an addition of \$10 as the license fee. For a corporation employing \$50,000 capital in Missouri, it would have to pay first a tax of \$50 thereon. This in addition to \$10 for license, and \$1.50 for certificate. The tax on all additional capital employed in Missouri would be \$5 on each additional \$10,000 or fractional part thereof. The Secretary of State is not permitted to issue a license to any foreign corporation bearing the same name as that of a domestic corporation (Laws of 1903, pp. 121-123).

In addition to the foregoing, every foreign corporation must maintain a place of business within the State where service of process may be made and

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where books shall be kept showing all of the corporate assets and liabilities as well as the names and residences of the shareholders and the officers and managers of the corporation (Laws of 1903, pp. 119-121).

*Carson-Rand Co. v. Stern*, 129 Mo. 381; 31 S. W. 772; *Tooney v. S. L. K. P.*, 74 Mo. Ap. 129; *Woollen Mills Co. v. Edwards*, 84 Mo. Ap. 448; *Kimball v. Davis*, 52 Mo. 194; *Hays v. Merkle*, 70 Mo. 509; *State ex rel. v. Cook*, 181 Mo. 596; 80 S. W. 929.

## MONTANA.

(The references cited below are to the Civil Code of 1895, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Montana is found in secs. 390-563 of the Civil Code of Montana. Special acts are provided for banking, trust, mutual insurance, building and loan, railway, telegraph, and telephone companies (secs. 393, 411). Corporations may be formed under the General Act for any kind of business.

2. **Incorporators.** — There must be at least three incorporators. There are no residential requirements, except that it is customary to have at least one resident incorporator (sec. 405).

3. **Contents of the Articles of Incorporation** (sec. 493). — The articles must contain :

a. *Name.* — Similarity of names is not expressly forbidden (sec. 403).

b. *Purposes.* — The purposes for which it is formed must be set forth. The law sets forth specifically the purposes for which corporations may be formed (sec. 393). The Secretary of State permits the insertion in the articles of incorporation of any number of purposes not covered by special acts. (See Session Laws of 1905, chap. 102.)

c. *Domiciliary Office.* — The place where the principal business is to be transacted must appear (sec. 403).

d. *Duration.* — Term for which the corporation is to exist — not to exceed twenty years (sec. 403; see also sec. 411).

e. *Board of Directors.* — The number, which shall not be less than three nor more than thirteen, and the names and residences of those who are to serve for the first three months (sec. 403).

f. *Capital Stock.* — The amount of its capital stock and the number of shares into which it is divided, and if there be more than one class of stock created by the articles of incorporation, a description of the several classes, with the terms on which the respective classes are created (Session Laws of 1905, chap. 102). The capital stock and par value of shares may be any amount (sec. 403).

g. *Stock Subscriptions.* — Amount actually subscribed, and by whom (sec. 403).

h. *Stock Assessments.* — If stock is assessable, it must be so stated (sec. 403).

4. **Statutory Powers.** — The Montana statutes enumerate the common law powers of corporations, and also confer the following additional powers: To remove directors; permitting stockholders to vote by proxy; permitting mining companies to consolidate; authorizing forfeiture of stock for non-payment of assessments; permitting the imposition of fines, not to exceed \$100, for violation of by-laws; allowing cumulative voting for directors (secs. 432, 436, 439, 452, 476, 520, 526; Laws of 1899, chap. 527). Under the

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Laws of 1905, chap. 103, corporations are given power to dispose of and sell their property either in whole or in part under certain restrictions as therein provided. Provision is made for the protection of dissenting stockholders.

*Macginness v. Company*, 29 Mont. 478; 75 Pac. 89.

5. **Procuring the Charter.** — The articles must be signed and acknowledged by each of the incorporators. They must then be filed in the office of the county clerk of the county in which the principal place of business is to be located, and a copy thereof certified by the county clerk with the Secretary of State. Thereupon the latter official issues a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon the corporate existence commences (secs. 405, 406). Collateral inquiry as to the legality of corporate existence is forbidden (sec. 395).

6. **Organization Tax.** — For recording and filing each certificate of incorporation and each certificate of increase of capital stock, there must be paid to the Secretary of State an organization tax in the following amounts: On all capitalization up to \$100,000, 50 cents per thousand dollars, but in no case less than \$20; additional from \$100,000, to \$250,000, 40 cents per thousand dollars; additional from \$250,000 to \$500,000, 30 cents per thousand dollars; additional from \$500,000 to \$1,000,000, 20 cents per thousand dollars; additional over \$1,000,000, 10 cents per thousand dollars (Laws of 1905, chap. 74).

For recording and filing the certificate of continuance of corporate existence the following amounts are charged; On amount of capitalization up to \$100,000, 25 cents per thousand dollars; additional from \$100,000 to \$250,000, 20 cents per thousand dollars; additional from \$250,000 to \$500,000, 15 cents per thousand dollars; additional over \$500,000 to \$1,000,000, 10 cents per thousand dollars; additional over \$1,000,000, 5 cents per thousand dollars.

For issuing each certificate of decrease of capital stock, \$3; for recording and filing each certificate of decrease of capital stock, \$5; for issuing certificate of continuance of corporate existence, \$3; for recording and filing each notice of removal of place of business, each certificate of change of name, or each certificate making capital stock assessable, \$3.

7. **Filing and Recording Fees.** — The recording and filing fees to the Secretary of State are included in the organization tax. For issuing certificate of incorporation, the charge is \$3; for certified copy of the articles of incorporation, 20 cents per folio; for making copy and for affixing seal, \$1. Recording fees in local county office, 15 cents per hundred words; for acknowledgment, 50 cents, and 10 cents for indexing. Usually \$3 covers this entire service (Laws of 1903, chap. 127, as amended by Laws of 1905, chap. 74.)

8. **Corporate Indebtedness.** — Must never exceed the amount of capital stock (secs. 438, 525, sub. 2).

9. **Commencing Business.** — As soon as the certificate of incorporation has been recorded in the office of the county clerk and a copy thereof duly certified with the Secretary of State, and the latter has issued a certificate that a copy of the articles, properly drawn, has been filed in his office, the corporation may commence business (sec. 406). By-laws must be adopted within one month after filing articles (sec. 430). No corporation can purchase, locate, or hold property in any county in the State, without filing a certified copy of its articles of incorporation in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase

or location is made (sec. 409). The corporation must organize and commence business within one year after date of incorporation (sec. 523).

*Morrison v. Clarke*, 24 Mont. 515; 63 Pac. 98.

10. **Organization Meetings.** — These must be held within the State, in the absence of any statute providing otherwise.

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings must be held at the office or principal place of business of the corporation within the State. Directors' meeting may be held within or without the State if the by-laws so provide. If held without the State, either the original or a copy of all proceedings had at such meeting, certified by the president and secretary under the corporate seal, shall be sent to and kept at the principal office of the corporation in Montana, and shall be part of the records thereat (sec. 448).

*McConnell v. Company* (Mont.), 76 Pac. 194.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be not less than three nor more than thirteen directors, who must likewise be stockholders to the amount prescribed in the by-laws. The only exception is that the directors authorized by the articles of incorporation to act as such for the first three months need not be stockholders (sec. 434).

*b. Liabilities.* — Directors are jointly and severally liable to the corporation and the creditors in the event of its dissolution, to the full amount of capital stock illegally withdrawn, paid out or reduced, and for debts contracted beyond the subscribed capital stock. Dissenting directors may protect themselves by causing their dissent to be entered at large in the minutes of the directors' meetings (sec. 438). They are also liable for wilfully making false certificates or reports for failure to make annual reports and for loans to stockholders (sec. 445; Laws of 1903, chap. 32).

*Gans v. Switzer*, 9 Mont. 408; 24 Pac. 18; *State Sav. Bank v. Johnson*, 18 Mont. 440; 45 Pac. 662.

13. **Stockholders' Liabilities.** — Stockholders are liable, to the extent of their unpaid stock subscriptions, for all acts and contracts made by such corporation until the whole amount of capital stock subscribed by them shall have been paid in (sec. 470).

14. **Stock Certificates.** — Each stockholder is entitled to a certificate of stock signed by the president and secretary (Civ. Code, sec. 471). Par value of shares may be any amount.

15. **Preferred Stock.** — Corporations may create two or more kinds of stock of such classes and with such distinct preferences and voting powers as shall be expressed in the articles of incorporation. The amount of preferred stock cannot exceed two-thirds of the capital stock paid in in cash or property. Preferred stock may be made subject to redemption at not less than par at a fixed time and price to be named in the stock certificate thereof, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend to be expressed in the certificate, not exceeding eight per cent, payable quarterly, semi-annually, or annually, before any dividend shall be declared by said board or paid on the common stock, and such dividend may be made cumulative. Unless the original or amended articles shall so provide, no corporation may create preferred stock (Laws of 1905, chap. 104).

16. **Payment of Capital Stock.** — Corporations can issue stock or bonds only for labor done, services performed, money or property actually received.

All fictitious increase of stock is void (Cons., Art. XV. sec. 10; sec. 525). The Code provides that the directors may purchase mines, manufactories, and other property necessary for its business, and issue stock in the amount of the value thereof in payment thereof, and the stock so issued shall be declared and deemed to be full-paid stock and not liable to any further call. Neither shall the holders thereof be liable for unpaid stock subscriptions as provided in sec. 470 of the Code. The law provides that any arbitrary value may be fixed on for mines, irrespective of actual value. Wherever stock has been issued therefor, such stock shall be deemed full-paid stock, regardless of the actual value of the mine at the time of such purchase (sec. 410).

17. **Books.** — Books of by-laws, stock register, transfer book, and record books of corporation must be kept at principal office within the State. Stockholders have the right of inspection at any time during business hours (sec. 541).

18. **Office.** — Every domestic corporation is required to keep an office within the State. The statute provides that the principal place of business within the State must be named in the articles of incorporation (secs. 403, 448).

19. **Reports.** — Officers and directors are held individually liable for debts of the corporation if the president and a majority of directors fail between December 31st and January 20th following to make, file, and publish a verified statement of amount of stock, amount paid in, and amount of existing debts (sec. 451; Laws of 1903, chap. 32).

20. **Anti-Trust Statute.** — Certain kinds of trusts and combinations are declared illegal by statutes. (See Cons., Art. XV. sec. 20; Penal Code, chap. 8, secs. 321, 325.) Under a recent decision (not yet officially reported) the act has been declared unconstitutional.

21. **Statutory Grounds for Forfeiture of Charter.** — The charter may be forfeited upon direct proceedings taken by the State for misuser or non-user thereof. Also for failure to organize and commence business within one year from date of incorporation (Code Civ. Pro., sec. 1411; Civil Code, sec. 523).

22. **Extension of Corporate Existence.** — The corporate existence may be extended by compliance with the statute in such case made and provided (secs. 412, 562).

23. **Annual Franchise Tax.** — There is no annual franchise tax.

24. **Amendments.** — To increase or decrease capital stock, extend or change the business, it is the duty of the trustees to publish a notice signed by at least a majority of them in a newspaper published in the county where the corporation's principal place of business is located, for at least six successive weeks, and deposit a copy thereof in the post-office, addressed to each stockholder, at his usual place of residence, at least six weeks previous to the date fixed for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it is proposed to increase or decrease the capital, and the business to which the company would be extended. At the meeting so called, the vote of at least two-thirds of all the shares of stock must be cast in favor of the proposed amendment. A certificate of the proceedings showing compliance with the provisions of law, the amount of capital paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, must be made out, signed and verified by the affidavit of the chairman and



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countersigned by the secretary, and such certificate shall be acknowledged by the chairman and filed and recorded in the same manner as is required in the case of original charters (secs. 412-414 inclusive, sec. 525).

To change the location of the principal place of business, or to increase or diminish the number of trustees, it is necessary to obtain the consent in writing of the holders of two-thirds of the capital stock. After such consent is obtained and filed in the office of the corporation, notice of the intended change of location or of the intended increase or diminishment of the number of trustees must be published at least once a week in the county wherein such principal place of business is located.

*Porter v. Company*, 29 Mont. 347; 74 Pac. 938.

25. **Dissolution.** — Dissolution may be had only by application to the courts (Code Civ. Pro., title VI. part III.; title X. part II. chap. 5, secs. 2190-2196; see also Civ. Code, sec. 561).

*Gans v. Switzer*, 9 Mont. 408; 24 Pac. 18.

26. **Foreign Corporations.** — Foreign corporations desiring to do business in Montana must file in the office of the Secretary of State and in the office of the county recorder of the county wherein they propose to carry on their business, a duly authenticated copy of their charter or certificate of incorporation, and a verified statement made by the president and secretary, and attested by a majority of the board of directors, showing name of corporation and location of its principal place of business within the State; amount of capital stock, amount of capital stock paid in in money, or in any other way; amount of assets of the corporation, of what they consist and actual value thereof; statement of the liabilities of the corporation, secured and unsecured. The corporation must also appoint an agent, who shall be a citizen of the State, upon whom service of process may be made (Act of March 9, 1901, repealing secs. 1030 and 1033 of C. C.). Must also file annual reports. For filing each certified copy of charter of any foreign corporation, the same fees shall be charged by the Secretary of State as is provided for in the case of domestic corporations. The Secretary of State is also entitled to collect the following fees from foreign corporations: For filing each notice of appointment of agent, \$5; for filing annual statements of foreign corporations, \$5.

*Powder River Cattle Co. v. Commissioners*, 9 Mont. 145; 23 Pac. 383; *Amer. H. S. Co. v. O'Rourke*, 23 Mont. 530; 59 Pac. 910; *McNaughton Co. v. McGirl*, 20 Mont. 124; 49 Pac. 651.

## NEBRASKA.

(The references are to the Compiled Laws of 1903, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Nebraska is found in the Compiled Statutes of Nebraska, 1903. Special acts are provided for banks, building and loan railway, safe deposit and trust, street railway, fidelity, and guaranty companies. Under the General Act parties may incorporate for any lawful business, including the construction of canals, railways, bridges, and other works of internal improvement.

2. **Incorporators.** — Any number of persons may incorporate. There are no residential requirements (sec. 2081).

3. **Contents of the Articles of Incorporation.** — It is customary to provide in the articles of incorporation for the following matters:

a. *Name.* — The name of the corporation. Similarity of names is not forbidden (sec. 2088).

b. *Domiciliary Office.* — The principal place within the State for the transaction of business (Id.).

c. *Purposes.* — The general nature of the business to be transacted. This would seem to permit of the incorporation of a company for more than one purpose. The Secretary of State construes the act to permit of the insertion of any number of purposes (Id.).

d. *Capital Stock.* — The amount of capital stock authorized, and time and conditions upon which it is to be paid in. The capital stock may be any amount. The par value of shares may be any amount. It is customary to insert provision that in case new stock is issued it shall be distributed *pro rata* among the existing stockholders (Id.).

e. *Duration.* — Time of the commencement and termination of the corporation. The corporate existence may be perpetual if desired (Id.).

f. *Corporate Indebtedness.* — Highest amount of indebtedness or liability to which the corporation is at any time to subject itself. The corporate indebtedness cannot exceed two-thirds of the capital stock (secs. 2085, 2088).

g. *Directors.* — A statement must be made to the effect that the affairs and business of the corporation shall be conducted by a board of directors of a certain designated number and by the officers by them to be elected as hereinafter provided (sec. 2088).

h. *Organization and Annual Meeting.* — A statement to the effect that the first meeting of the corporation shall be held upon the day of the organization of the corporation, and thereafter the annual meeting shall be held at the office of the corporation on a certain designated day. This should be followed by a statement that at such meeting and at the annual meetings thereafter the board of directors shall be elected by the stockholders from their own number to hold office until the annual meeting next after their election and until their successors are elected and qualify (Id.).

i. *Officers.* — A provision to the following effect should be inserted. The directors shall in each instance as soon as convenient after their election elect from their own number a president, vice-president, secretary, and treasurer, who shall hold office until the annual meeting next after their election and until their successors are elected and qualify. Any two of said offices may be held by one and the same person, excepting the offices of president and vice-president (Id.).

j. *By-Laws.* — The board of directors shall have full power and authority to make all rules and by-laws for the proper government and control of the business affairs of the corporation, and (if desired) they may alter and amend the same at pleasure (Id.).

k. *Filling of Vacancies.* — Vacancies occurring in the board of directors shall be filled by the stockholders. Offices vacated from whatever cause shall be filled by the board of directors (Id.).

l. *Amendments.* — Provisions may be inserted providing as follows: These articles of incorporation may be amended at any time. Every amendment shall be first approved by a two-thirds vote of the entire board of directors, and upon being so approved, it shall be entered at large upon the records of the board. A draft of the proposed amendment, or amendments as the case may be, shall then be submitted to each stockholder, with the notice of the meeting called for the purpose of voting upon the same, which notice shall be given at least ten days prior to the date fixed for the meeting. If such

amendment or amendments, or either of them, shall then be approved by the holder or holders of two-thirds of the capital stock of the corporation, each and every amendment so approved shall be considered adopted and be made a part of the articles of incorporation, and the board of directors shall thereafter subscribe, acknowledge, record, and publish the same, as by law required (sec. 2088).

4. **Statutory Powers.** — The statute merely enumerates the common law powers of corporations (sec. 2082; see sec. 1989). By constitutional provision the legislature is required to provide by law for cumulative voting in person or by proxy in the election of directors (Cons., Art. XIII. sec. 5).

*Williams v. Lowe*, 4 Neb. 382; *Enterprise Ditch Co. v. Moffitt*, 58 Neb. 642; 79 N. W. 560; *Fremont Carriage Co. v. Thomsen* (Neb.), 91 N. W. 376; *McLeod v. Lincoln Medical College* (Neb.), 98 N. W. 672.

5. **Procuring the Charter.** — The articles of incorporation must be signed by each of the incorporators. After the articles have been signed and acknowledged they must be filed in the office of the Secretary of State. Before such copy can be filed the organization tax must be paid together with the filing fees. Thereupon the corporation becomes a body corporate. The law specifically provides that no body of men acting as a corporation under the provisions of the Business Corporation Act shall be permitted to set up the want of legal organization as a defence to any action brought against them as a corporation; nor shall any person suing on a contract made with such corporation, or for an injury to the property of said corporation, be permitted to set up the want of legal organization in defence of said action. The articles of incorporation must also be filed with the county clerk in the county where the corporation's headquarters are to be located (sec. 2083; see also sec. 1988).

6. **Corporate Indebtedness.** — The amount of corporate indebtedness must not exceed two-thirds of the capital stock (sec. 341).

7. **Organization Tax.** — On filing the articles the Secretary of State must be paid a fee of \$10 if the capital stock does not exceed \$100,000. Where it exceeds that amount an additional 10 cents for each additional thousand dollars of authorized capital stock in excess of \$100,000.

8. **Filing and Recording Fees.** — There are no fees payable to the Secretary of State for filing articles of incorporation, except the payment of the organization tax. A recording fee, however, of 10 cents per folio of one hundred words is charged. For issuing a certified copy of the articles of incorporation, the charge is 10 cents per hundred words for copying, and 50 cents for certificate. For filing amendments to articles of incorporation the charge is \$5 for filing, and 10 cents per hundred words for recording. The fees for filing in local county office are about \$3. Publication of notice of intention to incorporate costs from \$10 to \$15.

9. **Commencing Business.** — Before a corporation can transact any business except its own organization, it must, in addition to adopting articles of incorporation and filing and recording them in the office of the Secretary of State, also file said articles with the county clerk of the county where their headquarters are to be located (sec. 2083). Within four months after filing the articles a notice must be published in a newspaper near the principal place of business for four weeks, setting forth the corporation's name, principal place of business, general nature of the business, amount of capital stock authorized, the time and conditions of payment, time of commencement and termination, highest amount of indebtedness or liability to which the corporation

is at any time to subject itself, and by what officers its affairs are to be conducted. It is not necessary, however, for the corporation before commencing business to await the completion of the publication of the notice above referred to (secs. 2086, 2089). In manufacturing corporations the incorporators are *ipso facto* commissioners to open the books for stock subscriptions. When ten per cent of the capital stock is subscribed, such corporations may commence business (sec. 1973). The corporation must organize within one year after its incorporation (sec. 2086).

**10. Organization Meeting.** — Organization meetings must be held within the State. In the case of manufacturing corporations the law provides that the incorporators shall be commissioners to open books for the subscription to the capital stock of said company before the corporation is organized by the adoption of articles of incorporation as set forth above. Immediately after these articles have been adopted the incorporators should meet as stockholders and choose a board of directors of the number designated in the articles. The board of directors shall elect at this meeting the officers and adopt by-laws. The corporation must organize within one year after incorporation (secs. 1971, 1973).

**11. Meetings of Stockholders and Directors.** — In the absence of any statute authorizing the holding of stockholders' meetings outside the State, such meetings should be held within the State. Directors' meetings may be held without the State if the by-laws so provide (sec. 1972).

*Haskell v. Read* (Neb.), 93 N. W. 997.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — The law does not prescribe the number of directors. There are no residential requirements. The directors of manufacturing corporations must be stockholders, and they must elect a president from their own number. (See sec. 1972.)

*b. Liabilities.* — Directors are liable for the illegal payment of dividends (Code of Civ. Pro., sec. 5260; secs. 2098, 2099).

**13. Stockholders' Liabilities.** — Stockholders are liable to the extent of their unpaid stock subscriptions. If the corporation fails to publish the annual notice of existing debts hereafter referred to, then in case the assets of the corporation are thereafter exhausted, leaving debts unpaid, the stockholders are liable to the amount of stock owned by them for all debts contracted before such notice was given (sec. 2093). If any corporation fails to comply substantially with the provisions of law relative to giving notice and other requisites of organization, then in such case, after the assets of the corporation are first exhausted, the property of stockholders shall be liable for corporate debts to the amount of capital stock owned by them (C. L., sec. 2096). (See also Const., Art. XI. b, sec. 4.)

*G. & A. Co. v. Company*, 46 Neb. 333; 64 N. W. 978, 1097; *F. L. & T. Co. v. Funck*, 49 Neb. 353; 68 N. W. 520; *Gorder v. Connor*, 56 Neb. 781; 77 N. W. 383; *Brown v. Brink*, 57 Neb. 606; 78 N. W. 280.

**14. Stock Certificates.** — Every stockholder is entitled to have a stock certificate issued to him signed by such officers as the by-laws may prescribe.

**15. Payment of Capital Stock.** — Neither the Constitution nor the statute prescribes how the capital stock shall be paid in. In the absence of such provision it is implied that it must be paid in in money or money's worth.

*G. & A. Co. v. Company*, 46 Neb. 333; 64 N. W. 978, 1097.

16. **Books.** — Stock books and books of account must be kept at the principal place of business of the corporation within the State, and be open to the inspection of stockholders. The foregoing provision would seem to apply only to manufacturing companies (sec. 1972).

17. **Office.** — Every corporation is required to keep an office within the State (sec. 2088).

18. **Reports.** — Every corporation must give notice annually by publication in a newspaper published in the county where its principal place of business is located of the amount of existing debts. This statement must be signed by the president and a majority of the directors (sec. 2093).

19. **Anti-Trust Statute.** — Under the Act of 1897, chap. 79, all trusts and conspiracies against trade and business as defined in the statute are declared to be illegal and void.

State v. Neb. Dis. Co., 29 Neb. 700; 46 N. W. 155.

20. **Preferred Stock.** — There is no express provision in the statute authorizing the issuance of preferred stock.

21. **Statutory Grounds for Forfeiture of Charter.** — The charter may be forfeited through any violation of the provisions of the General Corporation Act, such as the payment of dividends when the corporation has insufficient funds to meet its liabilities, etc. Repeated acts of misuser or non-user have been held to constitute grounds for forfeiture of franchise (sec. 2100; Code of Civ. Pro., secs. 5238-5260 inclusive). The charter may be forfeited if the corporation does not organize within one year after its incorporation (sec. 2086).

State v. A. & N. R. R. Co., 24 Neb. 143; 38 N. W. 43; State v. Nebraska Dis. Co., 29 Neb. 700; 46 N. W. 155; State v. Company, 4 Neb. 354.

22. **Annual Franchise Tax.** — There is no annual franchise tax.

23. **Amendments.** — The act does not specify just what amendments to the articles of incorporation may be made. It simply provides that every change in the articles shall be recorded and published in the same manner as original articles are required to be filed and recorded by law (C. L., sec. 2090). Special provision, however, is made in the case of reduction of capital stock. In this regard the law provides that the board of directors may, with the written consent of the persons in whose name a majority of the shares of the capital stock thereof shall stand, reduce the amount of the capital stock to the nominal value of the shares thereof, and issue certificates therefor.

24. **Dissolution.** — Corporations may be dissolved by consent of two-thirds of the stockholders (sec. 1996; see also secs. 2091, 2101).

Harrington v. Connor, 51 Neb. 214; 70 N. W. 911.

25. **Extension of Corporate Existence.** — Provision is made for the extension of corporate existence for companies incorporated for the purpose of erecting any public improvement (secs. 1991, 1992).

26. **Foreign Corporations.** — From and after June 30, 1905, all foreign corporations (except transportation companies), before they may engage in business within the State, must file a statement in the office of the Attorney-General of the State, signed and sworn to by its president, treasurer, or general manager, and a majority of the directors, on or before the 15th day of September in the year 1906, and in each year thereafter, for the year ending June 30 in said year, showing (a) The amount of its capital stock. (b) The market value of the same. (c) How much of the same has been paid in full

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in cash, or if the same has not been paid in full in cash, what has been received by the said corporation, joint stock company, or other association in lieu thereof, and the value of whatever shall have been so received by it. (d) The names of the officers and directors of such corporation, joint stock company, or other association, and all agents intrusted with the general management of its affairs. (e) The amount which has been paid in dividends during said year, the rate of percentage of such dividends, and times of paying the same. (f) A statement of all the stock owned by it, or any other corporation, joint stock company, or other association, and the number and value of each share in it; the amount of its own capital stock by other corporations, joint stock companies, or other associations held, and the value thereof, and the amount of stock in other corporations, joint stock companies, or other associations held in trust for it, or in which it is interested, directly or indirectly, absolutely or conditional, legal or equitable, specifying the corporations, joint stock companies, or other associations. (g) It shall also, on or before the 80th day of June, in the year 1908, file in the office of the Attorney-General of this State an undertaking, signed by such officers, general manager, and directors, that they will comply with the provisions of this and all other laws of this State in the management of the affairs of such corporation, joint stock companies or associations, and that they accept the provisions and liabilities of this act, and the obligations by it imposed, so long as they shall continue to hold or exercise such office, and shall thereafter within ten days of their entering upon the duties of such offices file a like undertaking, signed by every officer, general manager, or director thereof, elected or appointed to such office or employment.

This statement shall be in addition to all statements now or hereafter required by law, or by any other public authority, in this State (Laws of 1905, as contained in Supplement to Cobby's Annotated Statutes of Nebraska, sec. 11,582).

Schmitt & Bro. Co. v. Mahoney, 60 Neb. 20; 82 N. W. 99; Pioneer Savings & Loan Ass'n v. Eyer, 62 Neb. 810; 87 N. W. 1058; State v. Standard Oil Co., 61 Neb. 28; 84 N. W. 413; State v. Fleming (Neb.), 97 N. W. 1063.

## NEVADA.

(References below are to the Laws of Nevada, 1903, chap. 88, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Nevada is to be found in the Laws of 1903, chap. 88, secs. 1-114. Under this act corporations may be formed for the transaction of any lawful business, within or without the State, except insurance, surety, or railway companies. These last may be incorporated under the act if formed to transact business exclusively out of the State.

2. **Incorporators.** — Three or more. No residential requirements (sec. 1).

See *In re L. B. Co.*, 1 San. 349.

3. **Contents of the Certificate of Incorporation.** — The certificate must set forth:

a. **Name.** — Similarity of names is forbidden (sec. 4, sub. 1). It must end with "incorporated," or contain one of the following words, "association," "company," "corporation," "club," "society," or "syndicate" (Id.).

b. **Purposes.** — Objects for which the company is formed. Any number of purposes may be inserted (sec. 4, sub. 8).

*c. Capital Stock.* — Not less than \$2,000, number of shares and par value thereof, which may be any amount. Amount of subscribed capital stock with which it will begin business not less than \$1,000. Amount actually subscribed and amount actually paid up, if any. If preferred stock is to be issued, a description thereof and terms of its creation must be set forth (sec. 4, sub. 4).

*d. Duration.* — May be perpetual if desired (sec. 4, sub. 6).

*e. Original Subscribers.* — The names of each of the original subscribers to the capital stock and the amount subscribed by each (Laws of 1905, p. 51).

*f. Directors.* — Whether the members of the first governing board shall be styled "directors" or "trustees," and the number thereof, which shall not be less than three (sec. 4, sub. 7).

*g. Domiciliary Office.* — The location of the principal office within the State, giving the street and number if practicable (sec. 4, sub. 2). If not so described as to be easily located, the Secretary of State shall refuse to issue a certificate until such location is marked and established (Laws of 1905, chap. 51).

*h. Assessments.* — Whether the stock shall be subject to assessments or not after the subscribed price or par value thereof has been paid. Unless assessments are provided for, paid up stock and stock issued as fully paid up is non-assessable, and articles cannot be amended in this respect.

*i. Regulation of Internal Affairs.* — Any provision for the regulation of the internal affairs of the corporation that may be desired may be inserted (sec. 4, sub. 9).

**4. Statutory Powers.** — The act enumerates the common law powers, and also confers the following additional powers: to vote by proxy, to forfeit stock for non-payment of assessments, to issue preferred stock, to transact business outside of the State, to hold stockholders' and directors' meetings outside of the State, to permit cumulative voting, to appoint an executive committee from the board of directors, to consolidate with other corporations, to issue stock for labor or property, to issue bonds, to remove directors, to delegate the power to directors to adopt by-laws, to surrender charter, to hold stock in other corporations, and to fix number of directors by by-laws (secs. 7, 8, 9, 10, 14, 17, 20, 23, 43, 54, 78, 110).

*Sutro v. Company*, 19 Nev. 121; 7 Pac. 271; *Bassett v. Company*, 15 Nev. 293.

**5. Procuring the Charter.** — The incorporators must subscribe and acknowledge the articles, after which they must be filed and recorded in the office of the clerk of the county where the principal place of business is to be located. Next, a copy of these articles, certified under the seal of the clerk of said county, must be filed and recorded with the Secretary of State. This official, after payment to him of the organization tax and filing fees, issues a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon the corporate existence commences (secs. 8, 5, 6). Within thirty days after organization there must be filed with the Secretary of State a certificate of the election of trustees, together with certain details required by sec. 85 of the Code.

**6. Corporate Indebtedness.** — There is no statutory limitation upon corporate indebtedness.

**7. Organization Tax.** — Before incorporation there must be paid to the Secretary of State 10 cents for each thousand dollars of capital stock authorized, but in no case less than \$10 (Laws of 1905, chap. 51).

**8. Filing and Recording Fees.** — There is no charge for filing and re-

cording in the Secretary of State's office other than the payment of the organization tax. Neither is any charge made for furnishing certificates of incorporation. The cost of certified copy of charter is 40 cents per folio of one hundred words, and \$5 for certificate and seal of State. The charge is only \$2 when copy is furnished. In drafting the certificate of incorporation it is always best to have four copies prepared, one for filing in the county clerk's office, one for filing in the Secretary of State's office, one to be certified by law and returned to the incorporators, and one to be filed in the office of the Nevada agent. The charge for filing and recording amendments to articles is \$10. The filing and recording fees in local county offices vary according to the population of the county. The filing fee ranges from 15 to 25 cents, and the recording fee from 20 to 30 cents per folio; the cost of affixing certificate to copy ranges from 75 cents to \$1. The cost of filing certificate of election of directors, etc., with Secretary of State is \$1.

9. **Commencing Business.** — Business may be commenced as soon as the certified copy of articles is filed in the office of the Secretary of State. The time limited by statute within which business may be commenced is two years (sec. 5). Corporate existence cannot be collaterally attacked (sec. 52).

10. **Organization Meeting.** — May be held within or without the State. Provision for calling the same is made in the act (secs. 12, 13, and 38). Surviving incorporators are given the right to appoint persons to act in place of deceased incorporators.

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings may be held within or without the State, according as the by-laws provide. Voting by proxy permitted. Cumulative voting allowed. Directors' meetings may be held wherever the by-laws provide (secs. 13, 14, 17, 20, and 23).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors. They need not be stockholders. They must take the oath of office. No residential requirements (sec. 4, sub. 7, 9). They are empowered to appoint an executive committee of two or more of their number (sec. 23).

*b. Liabilities.* — Jointly and severally liable where they give out fraudulent reports. Also liable for illegal declaration of dividends or unlawful withdrawal of capital stock, where they consent thereto (secs. 68, 73, 77).

13. **Stockholders' Liabilities.** — Stockholders are only liable for debts of the corporation to the extent of their unpaid stock subscriptions (secs. 31, 32). The statutory liability of stockholders or directors of foreign corporations will not be enforced in Nevada (sec. 33).

*Thompson v. Bank*, 19 Nev. 171; 7 Pac. 870.

14. **Stock Certificates.** — Must be signed by president or vice-president and secretary or treasurer. The statute points out contents of stock certificates (sec. 56; Laws of 1905, chap. 51).

15. **Preferred Stock.** The act expressly authorizes corporations organized thereunder to create two or more kinds of stock, of such classes and with such designations, preferences, or voting powers as shall be expressed in the certificate of incorporation or in any amendment thereof. At no time, however, may the total amount of preferred stock issued and outstanding exceed two-thirds of the capital stock paid for in cash or property, and such preferred stock may, if desired, be made subject to redemption at any time after three years from the issue thereof at a price not less than par, and the holders thereof shall be entitled to receive and the corporation shall be bound to pay



thereon dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation not exceeding ten per cent per annum, payable quarterly, half yearly, or yearly, and such dividends may be payable before any dividend shall be set apart or paid on the common stock. Such dividends may be made cumulative provided the corporation shall set apart or pay such dividends to the holders of non-cumulative dividends before any dividends shall be paid on the common stock, but in no event shall the holders of any class of stock be personally liable for the debts of the corporation nor for the payment of dividends (sec. 4, sub. sec. 4, sec. 10).

**16. Payment of Capital Stock.** — May be paid for in money, labor, or property (secs. 28, 54, 55, and 99).

*F. A. N. Co. v. Thies*, 26 Nev. 158; 65 Pac. 373.

**17. Books.** — Original or duplicate stock ledger must be kept at principal office within the State for inspection of stockholders (sec. 14).

**18. Office and Agent.** — Corporation must have an office and agent in charge within the State (sec. 16).

**19. Reports.** — The only report required is the filing of a certificate of election or changes in the governing board of the corporation. This must be filed within thirty days thereafter in the office of the Secretary of State, giving details required by sec. 85 of the Code (filing fee, \$1). The penalty for failure to file the same is a fine of \$100 (Laws of 1905, chap. 51).

**20. Anti-Trust Statute.** — There is no anti-trust statute in this State.

**21. Statutory Grounds for Forfeiture of Charter.** — Charters may be forfeited for failing within two years to organize and commence in good faith the business of promoting the objects or purposes for which the corporation was organized (sec. 51). Also for failure to keep office and agent, etc., in the State for ninety days (Laws of 1905, chap. 51).

**22. Annual License Tax.** — There is no annual license tax.

**23. Amendments.** — The incorporators before the payment of any part of its capital may record with the clerk of the county in which its original certificate of incorporation is recorded, and file with the Secretary of State, an amended certificate duly signed by the incorporators named in the original certificate of incorporation duly acknowledged, amending its original certificate of incorporation in whole or in part (Laws of 1903, chap. 88, sec. 3). Corporations may also correct errors and omissions in the certificate of incorporations in the manner following:

The board of directors shall pass a resolution declaring that such error exists and that such corporation desires to correct the same. A certificate of such case shall be made, signed, and acknowledged by the president and secretary under the corporate seal. This certificate, together with the written assent in person or by proxy of two-thirds in interest of all of the stockholders of the corporation, shall be filed in the office of the Secretary of State (Laws of 1903, chap. 88, sec. 391).

Corporations may also change the nature of their business, their corporate name, increase their capital stock, change the par value of the shares of their capital stock, change the location of their principal office in the State, change the number of their directors or trustees, create one or more classes of stock, and make such other amendments as may be desired in the manner following: The board of directors shall pass a resolution declaring that such change or alteration is advisable, and calling a meeting of the stockholders to take action

thereon. The meeting shall also be held on such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally or by mail: if two-thirds in interest in each class of the stockholders having voting powers and all other persons having like powers shall vote in favor of such amendment, change, or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent in person or by proxy of two-thirds in interest of each class of said stockholders and creditors having voting powers, shall be filed in the office of the Secretary of State, and upon the filing of the same, and filing a certified copy of the said certificate of amendment with the county clerk of the county where the corporation has its principal place of business, the certificate or articles of incorporation shall be deemed to be amended accordingly.

The decrease of capital stock may be effected by the retiring or reducing of any class of stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender of each shareholder of his shares and the issuing to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock hereinbefore provided by amendment pursuant to this or the two preceding sections, the certificate decreasing the same shall be published for three weeks consecutively at least once in each week in a newspaper published in the county in which the principal office of the corporation is located, the first publication to be made within fifteen days after the filing of said certificate.

24. **Extension of Corporate Existence.** — Charters may be renewed if desired (secs. 107, 108).

25. **Dissolution.** — The charter may be surrendered by the incorporators before organization if desired (sec. 88). By resolution of a board of directors a meeting of the stockholders may be called to vote upon the question of dissolution. Two-thirds in interest of the stockholders or creditors entitled to vote are required to bring about a voluntary dissolution; it may be effected by written consent of nine-tenths interest of secured creditors entitled to vote with stockholders without a meeting (sec. 89).

26. **Foreign Corporations.** — Foreign corporations desiring to do business in the State are governed by what is known as the Retaliatory Taxation Law. This provides that such corporation shall pay the same taxes in Nevada that foreign corporations are required to pay in the domicile of the aforesaid foreign corporation. They must also file certified copy of certificate of incorporation with recorder of each county in which they are engaged in business, with a list of officers, duly certified by the proper officers; must appoint a resident agent in this State to receive legal process by certificate filed with the Secretary of State, failing in which process may be served upon the Secretary of State, and must publish an annual report in January and file the same with the county assessors where the business is carried on (sec. 106; secs. 897, 901; Laws of 1901, chap. 106; see also Laws of 1905, chap. 72). Fee for permit and filing fees, \$10.

W. G. & S. M. Co. v. Baker, 3 Nev. 351; Evans v. Lee, 11 Nev. 194; Brooks v. Syndicate, 24 Nev. 264, 311; 52 Pac. 575; 53 Pac. 597.

## NEW HAMPSHIRE.

(References below are to Public Statutes of New Hampshire, 1891, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of New Hampshire is to be found in the Public Statutes of New Hampshire, 1891, chap. 147, and Laws of 1895, chaps. 1 and 2. Under this act corporations may be formed for the purpose of carrying on any lawful business, excepting banking and life insurance, and the making of contracts for the payment of money at a fixed date or upon the happening of some contingency and the construction and maintenance of railroads and trading stamp corporations, or of companies engaged in the business of issuing, selling, or redeeming trading stamps, coupons, tickets, or other similar devices (Laws of 1905, chap. 70).

2. **Incorporators.** — There must be five or more incorporators of lawful age. There are no residential requirements (chap. 147, sec. 1).

3. **Contents of Articles of Association.** — The articles must set forth:

a. *Name.* — Similarity of names is forbidden (chap. 147, secs. 2, 3).

b. *Purposes.* — Object for which the corporation is formed. State officials construe this to authorize incorporation for any number of purposes not provided for by special act (chap. 147, sec. 2, and chap. 148, sec. 2).

c. *Domiciliary Office.* — Location of principal place of business (chap. 147, sec. 2).

d. *Officers.* — If desired, statement may be made as to what officers of the corporation are to be provided for in the by-laws (chap. 149, sec. 4).

e. *Capital Stock.* — Amount thereof. Capitalization cannot be less than \$1,000 nor more than \$1,000,000. Par value not less than \$25 nor more than \$500 (chap. 147, sec. 6).

f. *Meeting of Incorporators.* — Date and place of organization meeting and waiver of notice thereof (chap. 148, sec. 4).

g. *Incorporators.* — Names and post-office addresses of the incorporators (chap. 147, sec. 2).

The duration of corporate existence is unlimited, unless a limited term is specially used (chap. 148, sec. 3).

4. **Statutory Powers.** — In addition to the statutory enumeration of common law powers, the act authorizes stockholders to vote by proxy, and provides for the forfeiture of stock to the corporation of enough at published sale to pay up on whole for non-payment of assessments. No one can vote on more than one-eighth the whole capital; a stockholder can hold proxies to that extent except in railroad corporations (chap. 148, secs. 1-9 inclusive; chap. 149, secs. 22, 23, 25, 26; Laws of 1901, chap. 68; Laws of 1905, chap. 61; Laws of 1905, chap. 111).

5. **Procuring the Charter.** — Articles must be recorded in the office of the clerk of the town in which the business of the corporation is to be carried on, and also in the office of the Secretary of State. The charter fee, if any, must be paid to the State Treasurer at the time articles are filed (chap. 147, sec. 4).

6. **Corporate Indebtedness.** — Debts cannot be contracted exceeding one-half of the value of the corporate property (chap. 150, sec. 4).

C. R. S. Bank v. Fiske, 62 N. H. 78, 180.

7. **Organization Tax.** — Corporations formed to carry on business without the State pay the State Treasurer the following fees: If capitalization does not exceed \$25,000, \$10; from \$25,000 to \$100,000, \$25; from \$100,000 to \$500,000,

\$50; from \$500,000 to \$1,000,000, \$100; over \$1,000,000, \$200. Corporations formed by special act of the legislature, \$50 (chap. 14, secs. 5, 6; Laws of 1895, chap. 18, sec. 1). Corporations formed to carry on business and having their principal office within the State, unless incorporated by special act of the legislature, must pay to the State Treasurer a fee of \$50 (chap. 14, sec. 6).

8. **Filing and Recording Fees.** — The Secretary of State is entitled to fees for recording articles which average about \$1.50. Usually this fee does not exceed \$1.50, unless the articles are very long. For certified copy of articles the charge is 25 cents per page for typewriting and 50 cents for the certificate. The cost of recording articles in the city clerk's office is \$1.50.

9. **Commencing Business.** — Corporations may commence business as soon as the charter is filed as required by law and the organization perfected. Business must be commenced within three years from the date of incorporation (chap. 147, sec. 4; chap. 149, sec. 2).

10. **Organization Meeting.** — The organization meeting must be held within the State. This in the absence of any statute expressly authorizing such meeting to be held without the State. (See chap. 148, secs. 4, 5.)

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State. Directors' meetings may be held without the State if the by-laws so provide. There is no statute authorizing the holding of stockholders' meetings without the State, and at stockholders' meetings each stockholder may give one vote for each share he owns or has proxies for therein, not exceeding one-eighth part of the whole number of shares (chap. 149, sec. 9; Laws of 1905, chap. 68).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors, one of whom must be a resident of the State, provided the corporation has any stockholders within the State (chap. 149, sec. 4).

*b. Liabilities.* — Directors are liable for improper loans to the stockholders, for the declaration of illegal dividends, or for permitting contraction of corporate indebtedness beyond the amount limited by law. The directors and treasurer must, within thirty days after the whole amount of capital stock has been paid in, make, subscribe, and file in the office of the clerk of the town where the corporation has its principal place of business a certificate to that effect, under penalty of being liable for all the debts of the company contracted after the expiration of said thirty days and before said certificate shall be so made and filed; they are also liable for all debts of the company contracted while they are in office, if false certificates, returns, or notices are made by them (chap. 150, secs. 2-6, 14, 19). Directors are also individually liable for all debts of the corporation until the annual report is made as required by law (chap. 150, sec. 16).

13. **Stockholders' Liabilities.** — Stockholders are liable to the extent of their unpaid stock subscriptions. Stockholders receiving unlawful refund from the capital stock, or knowingly receiving illegal dividends, are individually liable to the amount of such loan, for debts of the corporation then existing or afterwards contracted, until the same is refunded or paid to the creditors of the corporation. They are also liable as partners if the charter is void (chap. 150, sec. 7; chap. 14, sec. 9). Stockholders are liable for all debts and contracts of the corporation until the whole amount of capital shall have been paid in, and a certificate thereof signed by the treasurer and a majority of the directors has been filed and recorded with the clerk of the city or town where such corporation has its principal place of business. No note

or obligation given by a stockholder shall be considered as payment of any part of the capital stock (chap. 150, secs. 8, 9).

*Swan v. Burnham*, 70 N. H. 580; 49 Atl. 93; *March v. Eastern R. R.*, 43 N. H. 516; *Smith v. Bank of New England*, 69 N. H. 254; 45 Atl. 1082; *Lancaster Starch Co. v. Moore*, 62 N. H. 671.

**14. Stock Certificates.** — Each stockholder is entitled to have a certificate issued to him, signed by the treasurer or cashier and such other officer as the by-laws may prescribe. No certificate can be issued until the par value of the shares mentioned in it have been fully paid to the corporation. The par value of the shares must not be less than \$25 nor more than \$500 (chap. 149, secs. 5, 10).

**15. Preferred Stock.** — Preferred stock is authorized (chap. 149, sec. 8).

**16. Payment of Capital Stock.** — Stock must be paid for in money or money's worth. The statute forbids the payment of capital stock by promissory note. The statute also provides that no shares shall be sold at less than par (chap. 149, sec. 9; chap. 150, sec. 9). No certificate can be issued until the par value of the shares mentioned in it has been fully paid (chap. 149, sec. 10; see also chap. 150, secs. 10, 11).

*Libby v. Company*, 68 N. H. 444; 44 Atl. 602; *Lincott et al. v. Company*, 68 N. H. 260; 44 Atl. 392; *Kimball v. Company*, 69 N. H. 485; 45 Atl. 253.

**17. Books.** — Records of the proceedings of stockholders and directors, and all papers, must be recorded in the office of the clerk of the corporation in the State (chap. 148, secs. 10, 11). Books of account, names and residences, number of shares owned by each stockholder, shall also be kept with the officer authorized to issue stock certificates. All records, accounts, and papers are open to inspection of stockholders (chap. 148, sec. 12).

**18. Office and Agent.** — Every corporation must maintain an office within the State, and a clerk therein to receive process, who shall keep the records of the company (Pub. Stat., chap. 148, secs. 10-12).

**19. Reports.** — Corporations, excepting insurance, railroad, bank, and loan and building associations, shall annually in May make a report to the Secretary of State, and to the clerk of the town in which the principal business is carried on, stating amount of assessments voted and paid in; amount of debts due to and from the corporation, and value of all property and assets of the corporation on the first day of May. Non-compliance makes the treasurer and directors individually liable for all debts and contracts (Pub. Stat., chap. 150, sec. 16).

**20. Anti-Trust Statute.** — There is no anti-trust statute. But see Constitution, Art. LXXXII., reading as follows: "The General Court is authorized and directed to pass such laws as will most effectually prevent monopoly, the stifling of competition, the artificial raising of prices and unfair methods of trade; to control and regulate the acts of all corporations doing business within the State, and to prevent their encroachments upon the liberties of the people."

**21. Statutory Grounds for Forfeiture of Charter.** — The charter may be declared void for failure to pay the fees required by law or for falsely pretending that the corporation is to carry on its business and have its principal office within the State for the purpose of avoiding the payment of the charter fee required by law. (See chap. 14, secs. 8-10; Laws of 1892, page 319.)

*State v. Baron*, 58 N. H. 370; *Parsons v. Eureka Powder Works*, 48 N. H. 66.

22. **Amendments.** — Corporations may change their name, increase or decrease their capital stock, or amend their articles of association in any other respect, by a majority vote of such corporation, at a meeting duly called for that purpose, by recording a certified copy of such vote in the office of the Secretary of State, and in the office of the clerk of the town or city wherein its principal place of business is located (chap. 147, sec. 4; Laws of 1895, chap. 1. sec. 2; Laws of 1897, chap. 49).

23. **Extension of Corporate Existence.** — There is no provision for the extension of corporate existence.

24. **Dissolution.** — Stockholders owning one-fourth of the stock may petition in the Superior Court for dissolution. (See P. B., chap. 147, secs. 10-12; see also chap. 148, sec. 18).

*School District v. Greenfield*, 64 N. H. 84; 6 Atl. 484.

25. **Annual License Fee.** — There is no annual license fee.

26. **Foreign Corporations.** — No special requirements exacted to carry on business, except trading stamp companies (Laws of 1905, chap. 83). They need not declare the name of their agent, except foreign insurance companies, who must appoint an insurance commission agent to receive service (chap. 169, sec. 4). May maintain a suit in the State. Foreign corporations doing business in the State must file with the State Librarian on or before January 1st of each year all printed reports of their condition issued by them during the twelve months preceding (Laws of 1895, chap. 3; chap. 148, sec. 20; see chap. 148, sec. 21). Foreign manufacturing companies doing business in the State must make annual May returns, same as domestic corporations.

*Lumbard v. Aldrich*, 8 N. H. 31.

## NEW JERSEY.

(The references cited below are to Laws of 1896, chap. 185, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act is to be found in chap. 185, Laws of 1896, and amendments thereto made annually since that time. Special acts are provided for the incorporation of savings banks, building and loan associations, surety, railway, telegraph, telephone, canal, turnpike, banking, safe deposit, and trust companies. The statute, however, provides that corporations may incorporate under the General Act for the purpose of constructing, maintaining, and operating railroads, telegraph and telephone companies outside of the State.

2. **Incorporators.** — Three or more persons. There are no residential requirements (sec. 6).

*C. R. R. v. P. R. R. Co.*, 31 N. J. Eq. 475; *Coddington v. Exrs. of Havens*, 8 N. J. Eq. 590.

3. **Contents of the Certificate of Incorporation** (sec. 8). — The certificate must set forth:

a. *Name.* — No name can be used already in use by any existing corporation of the State, or so nearly similar thereto as to lead to uncertainty or confusion. It must be in the English language (sec. 8; Laws of 1897, chap. 274;

## DIGEST OF INCORPORATION ACTS. — NEW JERSEY.

Laws of 1903, chap. 149). The name insurance, safe deposit, trust company, or bank cannot form part of the name (Laws of 1897, p. 274).

G. S. R. Co. v. Company, 22 N. J. L. J. (May, 1899), p. 147; Peck Bros. & Co. v. Company, 51 C. C. A. 251.

*b. Domicile.* — The location of the principal office in the State; street and number must be given if located in a city (sec. 8). Also the name of the agent in charge thereof and upon whom process may be served (Laws of 1898, p. 410).

Nicholson v. Company, 110 Fed. 705.

*c. Purposes.* — Any number of objects may be inserted provided they are not covered by the special acts above referred to (sec. 8).

Stewart v. Company, 12 N. J. L. J. 110.

*d. Capital Stock.* — Amount of total authorized capital stock (not less than \$2,000), the number of shares into which the same is divided, and the par value of each share (par value may be any amount). The amount of capital with which the corporation will begin business, which cannot be less than \$1,000. If there be more than one class of stock, a description of the different classes with the terms on which the different classes are created must be set forth (secs. 8, 18).

*e. Duration.* — May be unlimited if desired (sec. 8).

*f. Provisions for the Regulation of the Internal Affairs of the Corporation.* — If desired, provisions may be inserted for the regulation of the business and for the conduct of the affairs of the corporation as well as for creating and defining and limiting or regulating the powers of the corporation, the directors, and the stockholders or any class of stockholders (secs. 8, 11, 12, 17, 34, 47).

*g. Incorporators.* — Names and post-office addresses of the incorporators and the number of shares subscribed for by each. The aggregate amount of stock subscriptions must be equal to the amount of stock with which the corporation will commence business, which renders stock subscriptions necessary to the amount of \$1,000 (sec. 8; Laws of 1898, p. 410).

**4. Statutory Powers.** — In addition to the statutory enumeration of common law powers, the statute confers the following additional powers: To conduct business in other States and foreign countries; to have one or more offices out of the State; to hold, purchase, mortgage, and convey real and personal property out of the State. Corporations for the construction of railroads, water, gas, or electric works, canals, tunnels, bridges, viaducts, hotels, wharves, piers, etc., may subscribe for, pay for, hold, use, and dispose of stock or bonds in any corporation for the purpose of constructing, maintaining, and operating works of a similar character, and the directors of such corporations may accept in payment of stock subscriptions real or personal property necessary for the purposes of such corporation, or work, labor, and services performed or materials furnished to or for such corporation, to the amount of the value thereof, and issue full-paid stock in payment thereof. All classes of corporations which may be incorporated under the General Act are given express power to purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock or any bonds, securities, or evidences of indebtedness created by any corporation of New Jersey or any other State, and while the owner of such stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon. Other enumerated powers are the right to vote by proxy, to issue preferred stock, to lease its

property and franchises to another corporation, to extend the corporate existence, to consolidate with other corporations, to dissolve itself, to enforce a lien upon the stock of its members for debts due the corporation, to sell stock subscribed for for non-payment of stock subscriptions, and to provide for cumulative voting in the election of directors. Power to adopt by-laws may be delegated to the directors by inserting a clause to that effect in the charter. Directors may also be given power to fix amount of profits to be reserved as working capital. A corporation may acquire and hold its own shares (secs. 1-3, 7, 11, 17, 18, 29, 34, 36, 38, 48, 49, 51, 104, 105; Laws of 1899, p. 334; Laws of 1900, p. 418; Laws of 1902, p. 217; Laws of 1905, chap. 263).

*Hilles v. Parrish*, 14 N. J. Eq. 380; *M. T. & T. Co. v. D. T. & T. Co.*, 44 N. J. Eq. 568; 14 Atl. 907; *Berger v. U. S. Steel Corporation*, 63 N. J. Eq. 809; 53 Atl. 68; *State v. Mansfield*, 23 N. J. L. 510; *Ellerman v. Company*, 49 N. J. Eq. 217; *State R. R. Co. v. Hancock*, 35 N. J. L. 537; *State v. Rohlfis*, 19 Atl. Rep. 1099; *C. S. Co. v. Company* (N. J.), 55 Atl. 876.

**5. Procuring the Charter.** — The certificate of incorporation must be proved or acknowledged as required for deeds of real estate. If acknowledged without the State, the officer taking the acknowledgment must procure a county clerk's certificate of his appointment. The certificate, together with two copies thereof, should be taken to the office of the clerk of the county wherein the principal office of the corporation within the State is to be established. The clerk will then keep one of the copies for the purpose of recording the same, and will endorse upon the original and the other copy, certificates that they have been filed in his office. Then the original is filed in the office of the Secretary of State, and a duplicate copy with the county clerk's certificate endorsed thereon can be used by the Secretary of State for the purpose of furnishing the incorporators with a certified copy of the certificate of incorporation (secs. 8, 9).

*E. G. L. Co. v. Green*, 49 N. J. Eq. 329; 24 Atl. 560; *Stockton v. Company*, 55 N. J. Eq. 352.

**6. Corporate Indebtedness.** — There is no statutory limitation upon the amount of indebtedness which a corporation may incur.

**7. Organization Tax.** — Twenty cents for each thousand dollars of capital stock authorized, but never less than \$25.

**8. Filing and Recording Fees.** — To the Secretary of State for recording the certificate of incorporation, 10 cents per folio, with a minimum charge of \$1. For issuing certified copy of the certificate of incorporation, where same is furnished for that purpose, \$1. For filing report of officers and directors, \$1; fee to county clerk for recording certificate of incorporation, 25 cents per folio of 100 words; (Laws of 1904, chap. 148).

**9. Commencing Business.** — Before any corporation can begin business at least \$1,000 of capital stock must be subscribed, and before it can incur debts the said \$1,000 shall, within the discretion of the board of directors, be paid in either money or property. The law requires the president and secretary or treasurer, upon payment of each instalment of capital stock, or every increase thereof, to file in the Secretary of State's office within ten days thereafter a certificate stating the amount paid in in cash or in property, and the amount previously paid. There is no penalty attached for failure to comply with this provision, but officers neglecting or refusing to do so, for a period of thirty days after written request served on them by any stockholder, shall be



jointly and severally liable for all debts contracted before said filing (secs. 25, 26).

*Stout v. Zulick*, 48 N. J. L. 599.

**10. Organisation Meeting.** — Must be held within the State. The law provides that where one or more of the incorporators shall die before the corporation is organized, the survivors may in writing designate other persons who may take the place of the deceased incorporators in the organization (sec. 115).

*Babbitt v. Company*, 1 Stew. Dig. p. 208, § 13.

**11. Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State at the registered office. Directors' meetings may be held without the State if the by-laws so provide (sec. 44).

*Elkins v. Company*, 36 N. J. Eq. 467; *In re Election of St. L. S. Co.*, 44 N. J. L. 529; *Chapman v. Bates*, 61 N. J. Eq. 658; *C. & A. R. R. Co. v. Elkins*, 37 N. J. Eq. 273; *Loewenthal v. Company*, 52 N. J. Eq. 440; *Schwarzwalder v. Tegen*, 58 N. J. Eq. 319; *Kreissel v. Distilling Co.*, 47 Atl. Rep. 471; *Chapman v. Bates*, 61 N. J. Eq. 667.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — The minimum number of directors in New Jersey is three, one of whom must be a resident of the State. All directors must be stockholders, the number of shares to be fixed by the charter or by the by-laws. They may be classified if desired. Cumulative voting may be provided for in the certificate of incorporation if desired (secs. 12, 36, 39; Laws of 1900, p. 418).

*Collier v. Company* (N. J.), 57 Atl. 417.

*b. Liabilities.* — The directors are jointly and severally liable for paying dividends out of capital or for reducing the same. They are also liable for not making and publishing notice of decrease of capital, or for failing to display name of the company at the principal office, and for failure to allow inspection of books or to furnish a list of stockholders at elections, also for failure to file certificate of payment of capital stock within thirty days of written notice so to do. They are also liable for making loans to stockholders (secs. 25, 26, 33, 45, 48; Laws of 1898, p. 410; Laws of 1903, p. 362; Laws of 1904, chap. 143).

*Williams v. Boice*, 38 N. J. Eq. 364; *Loewenthal v. Company*, 52 N. J. Eq. 440; *P. L. F. Co. v. Buck*, 52 N. J. Eq. 279; *Ellerman v. Company*, 49 N. J. Eq. 217; *Titus v. Company*, 37 N. J. L. 98; *Wells v. Company*, 19 N. J. Eq. 402; *Fearing v. Glenn*, 73 Fed. Rep. 116; *International Bank v. Faber*, 86 Fed. Rep. 443; *M. T. Co. v. D. T. Co.*, 44 N. J. Eq. 568; *Weinburg v. Company*, 55 N. J. Eq. 640; *In re A. A. Griffing Iron Co.*, 63 N. J. L. 168; *Kearney v. Andrews*, 10 N. J. Eq. 70; *Matter of S. L. S. Co.*, 44 N. J. L. 529.

**13. Stockholders' Liabilities.** — Stockholders are personally liable to creditors to the amount of unpaid stock held by them where the capital stock is insufficient to meet the corporate debts and obligations.

*Nat. Trust Co. v. Miller*, 33 N. J. Eq. 155; *Wetherbee v. Baker*, 35 N. J. Eq. 501; *Bickley v. Schlag*, 46 N. J. Eq. 533; 20 Atl. 250; *Hood v. McNaughton*, 54 N. J. L. 425; 24 Atl. 497; *Bank v. Hendrickson*, 40 N. J. L. 52; *C. L. Company v. C. H. Co.*, 57 N. J. Eq. 627; *Hebberd v. S. C. Co.*, 55 N. J. Eq. 18; *Williams v. Boice*, 38 N. J. Eq. 364.

**14. Stock Certificates.** — Stock certificates must be signed by the president and treasurer (sec. 19).

*L. G. Co. v. Smith*, 51 Atl. Rep. 152.

**15. Preferred Stock.** — The right to create preferred stock must be reserved either in the original charter or in a certificate of amendment thereto. At no time must the total amount of preferred stock issued and outstanding exceed two-thirds of the capital stock paid in in cash or property. The preferred stock may, if desired, be made subject to redemption at any time after three years from the issue thereof at not less than par. No dividend exceeding eight per cent per annum can be paid thereon. Dividends may be made cumulative or non-cumulative as desired (sec. 18; see also Laws of 1902, p. 217, sec. 2). Preferred stock may be made convertible into bonds if desired (Laws of 1902, p. 217).

*Elkins v. Company*, 36 N. J. Eq. 233; *McGregor v. Company*, 33 N. J. Eq. 181; *Pronick v. Company*, 58 N. J. Eq. 97; *Smith v. Company*, 58 N. J. Eq. 331; *Berger v. U. S. Steel Corp.*, 53 Atl. 68; *State ex rel. Smith v. Company*, 52 Atl. Rep. 23; *Mayer v. Atty.-Gen.*, 32 N. J. Eq. 815; *Berger v. U. S. Steel Corp.*, 63 N. J. Eq. 809; 53 Atl. Rep. 68.

**16. Payment of Capital Stock.** — Nothing but money shall be considered as payment of any part of the capital stock of any corporation except in the following cases: Any corporation formed under the provisions of the General Act may purchase mines and manufactories or other property necessary for its business, or the stock of any company or companies owning mines or manufactories, or purchase materials or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and stock so issued shall be fully paid and non-assessable and not liable to any further call. In the absence of actual fraud in the transaction the judgment of the directors as to the value of the property shall be conclusive (secs. 48, 49). Within ten days after the payment of the capital stock a certificate of such payment signed and verified by the president and secretary or treasurer must be filed with the Secretary of State. All officers neglecting to make such certificate after written request so to do by a creditor or stockholder, are jointly and severally liable for all debts contracted before the filing of such certificate (secs. 25, 26).

*G. I. U. Co. v. L'Anson's Exrs.*, 42 N. J. L. 10; 43 N. J. L. 442; *N. J. M. Ry. v. Strait*, 35 N. J. L. 322; *Downing v. Potts*, 23 N. J. L. 66; *Nassau Bank v. Brown*, 30 N. J. Eq. 478; *Waters v. Quimby*, 27 N. J. L. 296; 28 N. J. L. 533; *Donald v. Company*, 48 Atl. Rep. 771; *P. T. F. Co. v. Buck*, 52 N. J. Eq. 219; *E. N. Bank v. Company* (N. J.), 60 Atl. 54; *Clevenger v. Moore* (N. J.), 58 Atl. 88.

**17. Books.** — The books of the corporation, except the stock and transfer books, may be kept outside the State, if the by-laws or the certificate of incorporation so provide (secs. 33, 44). The two books mentioned are open to the inspection of stockholders.

*State ex rel. O'Hara v. Nat. Biscuit Co.*, 54 Atl. 241; *Downing v. Potts*, 23 N. J. L. 66; *Matter of S. L. S. Co.*, 44 N. J. L. 529; *Rosenfield v. Einstein*, 46 N. J. L. 479; *Fuller v. Company*, 61 N. J. Eq. 648; *Mitchell v. Company*, 24 Atl. Rep. 407; *Huyler v. Company*, 42 N. J. Eq. 139.

**18. Office and Agent.** — Every corporation must maintain its principal office within the State, and have an agent in charge thereof, wherein shall be kept the stock and transfer books of the corporation. The name of

## DIGEST OF INCORPORATION ACTS. — NEW JERSEY.

the corporation must be at all times conspicuously displayed at the entrance of such office (secs. 44, 45; Laws of 1897, p. 175; Laws of 1898, p. 410).

*Hilles v. Parrish*, 14 N. J. Eq. 380; *Coe v. Company*, 31 N. J. Eq. 105.

**19. Reports.** — Within thirty days after the first election of officers and thereafter within thirty days after the annual election a report must be filed in the office of the Secretary of State, signed either by the president and one other officer, or by two directors, setting forth the name, registered office within the State, and agent in charge thereof, business authorized, capital stock and amount actually issued and outstanding, names and addresses of officers and terms thereof, the date of the next annual election. It must also state whether the name of the company has been at all times displayed at the entrance of its registered office, and whether it has kept at its registered office a transfer book and stock book containing the names and addresses of the stockholders and the number of shares held by them. In addition to the foregoing the corporation must on or before the 1st day of May make a report as of January 1st preceding, signed by the president or treasurer, showing the amount of stock actually issued and outstanding as of that date as well as the amount of authorized stock, and whether payment has been made therefor in cash or property (secs. 43, 43 a; Laws of 1898, p. 410; Laws of 1901, chap. 9, p. 31).

**20. Anti-Trust Statute.** — There is no anti-trust statute in force in New Jersey.

**21. Statutory Grounds for Forfeiture of Charter.** — Charters may be forfeited in New Jersey upon the following grounds: For failure to comply with a court order requiring corporate books to be brought within the State. For non-payment of the annual franchise tax (sec. 44; Laws of 1896, p. 319; Laws of 1904, chap. 219; Laws of 1905, chap. 259.)

**22. Amendments.** — Before the payment of any part of the capital stock incorporators are permitted to record with the clerk of the county in which the original certificate of incorporation is recorded and filed and with the Secretary of State, an amended certificate duly signed and acknowledged by all the incorporators modifying, changing, or altering the original certificate of incorporation in whole or in part. The charge for filing and recording this amendment is \$20 (sec. 26 a; see also Laws of 1899, p. 174).

To change the nature of the business, the corporate name, increase or decrease the capital stock, change the par value of the shares, change the location of the principal office of the corporation within the State, to extend corporate existence, or to create one or more classes of preferred stock, the following method of procedure must be adopted: First, the board of directors must pass a resolution declaring that such amendment is advisable and calling a meeting of the stockholders to take action thereon. The meeting must be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days' notice given personally or by mail. If two-thirds in interest of each class of the stockholders having voting powers shall vote in favor of such amendment, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent in person or by proxy, of two-thirds in interest of each class of such stockholders shall be filed in the office of the Secretary of State, and upon the filing of the same the certificate of incorporation shall be deemed to be amended accordingly (sec. 27; see also sec. 134).

Special provision is made in the case of change of location of office or decrease of capital stock. The law provides that the board of directors may change the location of the principal office by resolution adopted at a regular or special meeting of said board by the vote of at least two-thirds of the members of such board. No certificate, however, is required to be filed in the case of the removal of any office from one point to another in the same town or city in the State. The foregoing provision generally covers cases where it is desired to change the resident agent in charge of the office. Upon the adoption of a resolution as aforesaid, a copy thereof must be filed in the office of the Secretary of State signed by the president and secretary of the corporation and sealed with its corporate seal. For filing this certificate the Secretary of State charges a fee of \$5 (sec. 28 a; Laws of 1897, p. 175).

Decrease of capital stock may be effected by the retiring or reducing any class of the stock, or by drawing the necessary shares by lot for retirement, or by the surrender by every shareholder of his shares and the issuance to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring the shares owned by the corporation, or by reducing the par value of the shares. The certificate reducing the capital stock must be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located, the first publication to be made within fifteen days after the filing of such certificate (sec. 29).

*Meredith v. Company*, 59 N. J. Eq. 257; 60 N. J. Eq. 445; *Pronick v. Company*, 58 N. J. Eq. 97; *Donald v. Company*, 48 Atl. Rep. 771; *Way v. Company*, 60 N. J. Eq. 263.

**23. Extension of Corporate Existence.** — May be extended by compliance with the statute for any period desired (secs. 27, 119; Laws of 1903, chap. 205).

*N. L. Lead Co. v. Dickinson* (N. J.), 57 Atl. 138.

**24. Dissolution.** — Voluntary dissolution of the corporation requires a majority vote of directors and written assent of two-thirds in interest of the stock. If the written assent of all the stockholders is obtained, a meeting for the purpose of voting upon the question of dissolution is unnecessary (sec. 31; Laws of 1900, p. 316). The incorporators also have power to dissolve the corporation before capital is paid in and business commenced (sec. 32).

*Benedict v. Company*, 49 N. J. Eq. 23.

**25. Annual Franchise Tax.** — An annual franchise tax of one-tenth of one per cent on the par value only of that proportion of the authorized stock which is issued and outstanding on the 1st day of January is exacted where the total authorized capital stock does not exceed \$3,000,000. Over that sum and up to \$5,000,000 the tax is one-twentieth of one per cent. When above \$5,000,000, \$50 for every \$1,000,000 or part thereof in excess of \$5,000,000. Mining or manufacturing companies having at least fifty per cent of their issued or outstanding stock invested in mines or manufacturing within the State are exempt from such franchise tax. In those cases where less than fifty per cent is so invested the assessed value of the real or personal estate so used in the State is deducted (Laws of 1901, p. 31). Treasury stock is not subject to the annual tax.

*N. C. Co. v. Assessors*, 53 N. J. L. 564; *E. P. Co. v. Assessors*, 55 N. J. L. 55; *E. P. T. Company's Case*, 51 N. J. Eq. 71; *E. U. P. Co. v. Assessors*, 57 N. J. L. 520; *S. B. Co. v. Assessors*, 60 N. J. L. 66; 61 N. J. L. 289; *Printing Co. v. Assessors*, 51 N. J. L. 75; *E. J. Ass'n v. Assessors*, 47 N. J. L. 36.

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**26. Foreign Corporations.** — Must file copy of charter with the Secretary of State attested by its president and secretary under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, and the amount actually issued, the character of the business which it is to transact in the State and designating its principal office in the State, and an agent who shall be a domestic corporation or a natural person of full age, actually resident in the State, together with his place of abode, upon whom process may be served. For filing copy of charter and statement in the Secretary of State's office, the fee is \$10 (sec. 114). They must also file the same reports required of them in their domiciliary State, if any, before they are allowed to transact business therein. They must pay the same license tax as is required by the laws of such domiciliary State of New Jersey corporations. Annual reports are also required (Laws of 1897, p. 124; Laws of 1904, chap. 221; Laws of 1896, secs. 43, 97-99, 100).

*D. & H. Canal Co. v. Mahenbrock*, 63 N. J. L. 281; 43 Atl. 978; *Del., etc. Co. v. Pensauken*, 116 Fed. 910; *Faxon Co. v. Lovett*, 60 N. J. L. 128; *A. N. & T. Co. v. Gintlens et al.*, 21 N. J. L. 190; *Man, etc. Loan Ass'n v. Massareli*, 42 Atl. Rep. 284; *Benton v. City of Elizabeth*, 61 N. J. L. 411; 61 N. J. L. 693.

## NEW MEXICO.

(Unless otherwise stated, references below are to the Territorial Assembly Laws of 1905, chap. 79).

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of New Mexico is to be found in chap. 79 of the Territorial Laws of 1905, approved March 15, 1905. Under it corporations may be formed for any lawful purpose or purposes whatsoever, except for the construction and operation of railroads, telegraph lines, express companies, savings banks, banks, building and loan associations, insurance, surety, and irrigation companies. Corporations may, however, be incorporated for the purpose of constructing, maintaining, and operating railroads, telegraph lines, express companies, or any of the other excepted purposes above enumerated, for the purpose of transacting business outside of the Territory (sec. 5).

**2. Incorporators.** — Any number not less than three. There are no residential requirements (sec. 5). If before incorporation one of the incorporators dies, the survivors may in writing designate another person or persons to take the place or places of the deceased incorporator (sec. 121).

**3. Contents of the Certificate of Incorporation.** — The certificate must set forth:

*a. Name.* — There cannot be more than one corporation of the same name (sec. 7).

*b. Domiciliary Office.* — The location (town or city and street number, if number there be) of its principal office within the Territory (sec. 7), and the name of the agent therein and in charge thereof, upon whom process against the corporation may be served.

*c. Purposes.* — Any number of purposes not covered by special act are permitted (sec. 7).

*d. Capital Stock.* — The amount of the total authorized capital stock of the corporation, which cannot be less than \$3,000; the number of shares into which the same is divided, and the par value of each share; the amount of the capital stock with which it will commence business, which cannot be less

than \$2,000, and if there be more than one class of stock created by the certificate of incorporation a description of the different classes with the terms on which they are created (sec. 7).

*e. Incorporators.* — The names and post-office addresses of the incorporators and the number of shares subscribed for by each. The aggregate of said subscriptions shall be the amount with which the company will begin business, and must be at least \$2,000.

*f. Duration.* — The number of years, if any, limited for the duration of the company. The maximum duration is fifty years (sec. 7).

*g. Directors.* — The number of directors, not less than three, and the names of those who are to act as such for the first three months (sec. 16).

*h. Regulation of Internal Affairs.* — The certificate of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting, and regulating the powers of the corporation, the directors, and the stockholders, or any class or classes of stockholders (sec. 7).

**4. Statutory Powers.** — In addition to a statutory enumeration of common law powers, the following additional powers are granted: To conduct business in other States and foreign countries; to confer upon directors power to alter by-laws; to classify directors; to authorize voting by proxy; to issue preferred stock; to convert preferred stock into bonds; to issue bonds convertible into common stock; provide for cumulative voting; to hold stock in other corporations; to consolidate with other corporations; to appoint an executive committee; to lease its property to other corporations; to forfeit stock for non-payment of assessments (secs. 1, 2, 11, 24-26 inclusive, 40, 57, 58, 112, 114, 124).

**5. Procuring the Charter.** — The certificate of incorporation must be signed in person or by attorney, in fact by all of the subscribers to the capital stock named therein. It must be acknowledged in the same manner as is required for deeds of real estate, and must be filed in the office of the Secretary of the Territory. A copy thereof duly certified by the Secretary of the Territory must be recorded in a book to be kept for that purpose in the office of the recorder of the county, where the principal office of said company shall be established, and thereupon corporate existence commences (secs. 5, 7, 8, 9). Within twenty days after the filing of the same, a certified copy of the certificate of incorporation (and certificate of stockholders' non-liability, if any) shall be published in some newspaper of general circulation in the county where the principal office of the corporation is located. Proof of such publication shall be filed with the Secretary of the Territory within twenty days after the date of the last publication, and upon failure to comply with this provision for a period of twenty days thereafter, the said corporation shall forfeit the right to do business in the Territory, and be fined in the sum of not less than \$100 for such failure (sec. 135).

**6. Corporate Indebtedness.** — There is no limitation upon the amount of indebtedness which corporations may incur.

**7. Organization Tax.** — Ten cents for each thousand dollars of total authorized capital, but in no case less than \$25 (sec. 119).

**8. Filing and Recording Fees.** — The Secretary of the Territory is entitled to no fees for filing and recording the certificate of incorporation other than the payment of the organization tax. The payment of this fee also entitles the corporators to a certificate of incorporation. The charge for certified

copy of certificate of incorporation is 10 cents per hundred words for making copy and \$1 for the certificate. For filing increase of capital stock, 10 cents for each thousand dollars of the total increase authorized, but in no case less than \$20; consolidation and merger of corporations, 10 cents for each thousand dollars of capital stock authorized, beyond the total authorized capital of the corporation consolidated, but in no case less than \$20. For filing change of name, change of nature of business, amended certificates of organization, decrease of capital stock, increase or decrease of par value or number of shares, \$20; for filing certificate of change of location of principal office, \$5; for filing list of officers and directors, \$1; recording fees in recorder of deeds office, 15 cents a folio for the first ten folios of one hundred words, and 10 cents a folio for all over (sec. 119). Cost of publication averages about \$12.

9. **Commencing Business.** — Corporations may commence business as soon as the certificate of incorporation is filed, as required by law. The law provides that the president and secretary or treasurer upon payment of the capital stock, and of every increase thereof, shall make a certificate stating the amount of capital so paid, whether paid in cash or by the purchase of property, and stating also the total amount of capital stock, if any, previously paid and reported. This certificate after being signed and sworn to by the president and secretary or treasurer is within ten days after such payment to be filed in the office of the Secretary of the Territory (sec. 27). There is no absolute penalty for failure to comply with this provision, but officers neglecting or refusing to do so for a period of thirty days after written request served on them by any stockholder, are jointly and severally liable for all debts contracted before such filing.

10. **Organization Meeting.** — The organization meeting must be held within the Territory. If all of the incorporators shall in writing waive notice and fix a time and place for the meeting, no notice or publication shall be required (sec. 15).

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the Territory (secs. 16, 37-46 inclusive, and sec. 50). Directors' meetings may be held within or without the Territory as the by-laws may provide (sec. 50).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors who must be stockholders. One director must be a resident of the Territory, and directors may be classified into not more than five classes, according to the length of their term. The directors may by authority conferred in the by-laws, or by the certificate of incorporation, appoint an executive committee to act for and in the name of the board of directors (secs. 11, 44).

*b. Liabilities.* — Directors are liable for the illegal declaration of dividends, and for the unlawful reduction of capital, unless they enter their dissent from such action at length upon the minutes of the meetings of the board of directors, and causing a true copy of such dissent to be published within two weeks after the same shall have been so entered, in a newspaper published in the county where the corporation has its principal place of business (secs. 33, 34). Directors are also forbidden to make loans to stockholders or officers of the corporation, and are liable for making false certificates (secs. 54, 59). Any officer neglecting or refusing to file the certificate required by law relative to the payment of capital stock within thirty days after written request so to do by a creditor or stockholder of the corporation, is jointly and severally liable for all debts contracted before the filing of such certificate.

**13. Stockholders' Liabilities.** — Stockholders are personally liable to creditors to the amount of unpaid stock held by them where the capital stock is insufficient to meet the corporate debts and obligations (sec. 22). Even this liability may be avoided by filing with the certificate of incorporation a separate certificate signed and executed in the same manner as in the case of the original certificate of incorporation, declaring that there shall be no stockholders' liability on account of any stock issued. This certificate must be filed in the office of the Secretary of the Territory at the same time as the certificate of incorporation, and must be likewise certified and recorded in the office of the county recorder. To obtain the benefit of such a certificate, however, both the certificate of incorporation together with the declaration of non-liability of stockholders must be published in the manner provided by law (sec. 23). After this is done, stockholders in any corporation are only liable for the amount of the capital certified to have been actually paid in property or cash at the time of the commencement of business. (See also secs. 96-98.)

**14. Stock Certificates.** — Each stockholder is entitled to a certificate showing the number of shares owned by him and signed by the president and secretary (sec. 20).

**15. Preferred Stock.** — Corporations may issue two or more kinds of stock of such classes and with such distinctions and preferences and voting powers as shall be stated and expressed in the certificate of incorporation, or any certificate of amendment thereof. At no time, however, can the total amount of the preferred stock issued and outstanding exceed two-thirds of the capital stock paid in in cash or property. The preferred stock may if desired be subject to redemption at any fixed time after the issue thereof at a price not less than par, and the holders thereof shall be entitled to receive and the corporation shall be bound to pay thereon dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation, not exceeding ten per cent per annum, payable quarterly, half yearly, or yearly. Such dividends may be made cumulative if desired. Preferred stockholders are expressly exempted from liability for debts of the corporation, and in case of insolvency the corporation's debts or other liabilities must be paid in preference to the preferred stock (sec. 18). Preferred stock may be made convertible into bonds if desired (sec. 19).

**16. Payment of Capital Stock.** — The law provides that nothing but money shall be considered as payment of any part of the capital stock except in the case of the purchase of property (sec. 54). The law, however, specifically provides that any corporation formed under the act may purchase mines, manufactories, or other property necessary or proper for its business, or the stock of any company or companies owning mines and manufacturing or producing materials or other property necessary or proper for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full paid stock and not liable to any further call, neither shall the holders thereof be liable for any further payment under any of the provisions of this act, and in the absence of fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact (secs. 55, 57).

**17. Books.** — Stock and transfer books must be kept at the principal and registered office of the corporation in the Territory (sec. 37). These books



must be open to the examination of any stockholder during business hours. Any officer having charge of such books and refusing or neglecting to exhibit the same to a stockholder during the usual hours for business, shall for such offence forfeit the sum of \$200. The law provides, however, that no stockholder or other person shall have the right to inspect such books for any improper purpose or any purpose not connected with the business of the corporation (sec. 37). All other books excepting the stock and transfer books may be kept outside of the Territory if desired (sec. 50).

**18. Office and Agent.** — The corporation must set forth in its certificate of incorporation the name of its agent therein, the one in charge of its registered office within the State and upon whom process against the corporation may be served. The office designated in the certificate shall be deemed the office and post-office address of the corporation (secs. 49 and 50). The maintenance of this office is made obligatory upon the corporation. (See sec. 50.) The law also requires the name of every corporation at all times to be conspicuously displayed at the office of the corporation in the Territory (sec. 51).

**19. Reports.** — All corporations, both foreign and domestic, must file in the office of the Secretary of the Territory within thirty days after the first election of officers and directors and annually thereafter within thirty days after the time appointed for holding the annual election of directors a report, authenticated by the signatures of the president and one other officer, or by any two directors of the company, stating (1) Name of the corporation. (2) The specific location of its registered office in the Territory and the name of the agent upon whom process against the corporation may be served. (3) The character of its business. (4) The amount of its authorized capital stock, if any, and the amount actually issued and outstanding. (5) The names and addresses of all the directors and officers of the company and when the term of office of each expires. (6) The date appointed for the next annual meeting of the stockholders for the election of directors. If such report is not made and filed, the Secretary of the Territory is entitled to a fee of \$1 for notifying the corporation of such delinquency, and if the report is not made and filed within thirty days after such notice, the corporation shall forfeit to the Territory \$200 (sec. 48). The law further provides that if the report is not so made and filed, all directors of any domestic corporation wilfully refusing to comply with the law, and who are in office during the default, shall at the time appointed for the next election, and for a period of one year thereafter be rendered ineligible for the election or appointment to any office in the corporation (sec. 48, also sec. 49).

**20. Anti-Trust Statute.** — There is no territorial anti-trust statute.

**21. Statutory Grounds for Forfeiture of Charter.** — All charters are subject to repeal by the legislatures (sec. 3). Also in case the corporation fails to comply with the order of any court calling for the producing of stock and transfer books for the inspection of those authorized to see the same, the charter of such corporation may be declared forfeited by the court making such order (sec. 50).

**22. Amendments.** — The incorporators before the payment of any part of its capital stock may file with the Secretary of the Territory and record a certified copy thereof in the office of the recorder of the county in which its principal place of business is located, an amended certificate duly signed by all the incorporators named in the original certificate of incorporation modifying or changing the original certificate in whole or in part (sec. 29).

Corporations may also change the nature of their business, change their name, increase or decrease their capital stock, change the location of their principal office, and make such other amendment as may be desired in manner following:

The board of directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon. The meeting may be held upon such notice as the by-laws provide, and in the absence of such provision upon twenty days' notice either personally or by mail. If two-thirds in interest of each class of the stockholders having voting powers shall vote in favor of such amendment, a certificate thereof shall be signed and acknowledged by the president and secretary under the corporate seal, and such certificate, together with the written assent in person or by proxy of two-thirds in interest of each class of the stockholders, or the affidavit of the president and secretary that the assent of two-thirds in interest of each class of stockholders is given to such amendment, shall be filed in the office of the recorder of the county in which the principal place of business of such corporation is located, and in the office of the Secretary of the Territory (sec. 30). The board of directors may change the location of the principal office of such corporation within the Territory to any other place within the Territory by resolution adopted at a regular or special meeting of such board by the vote of at least two-thirds of the members thereof. No certificate, however, is necessary in case of removal of the office from one point to another in the same town or city. Upon the adoption of the resolution as aforesaid, a copy thereof shall be filed in the office of the Secretary of the Territory, signed by the president and secretary under the seal of the corporation, and a certified copy thereof shall be recorded in the office of the recorder of the county in which its principal place of business is located as changed (sec. 32).

Special provision is made in case it is desired to decrease capital. This may be effected by retiring or reducing any class of the stock, or by drawing the necessary shares by lot for retirement, or by the surrender by every shareholder of his shares and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring the shares owned by the corporation, or by reducing the par value of shares. The certificate relative to the decrease of capital stock must be published for three weeks successively at least once in each week in a newspaper published in the county in which the principal office of the corporation is located, the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for such sums as they shall respectively receive of the amount so reduced (sec. 33).

**23. Extension of Corporate Existence.** — Corporate existence may be extended to any period of time desired by complying with the statute in such case made and provided. (See sec. 30.)

**24. Dissolution.** — Corporations may be dissolved by any corporation before the paying in of capital stock either in whole or in part (sec. 36). Dissolution after organization and the paying in of all the capital stock may only be had by application to the courts (secs. 60 to 67 inclusive).

**25. Annual License Tax.** — There is no annual license tax imposed.

**26. Foreign Corporations.** — Every foreign corporation before transacting business in the Territory must file in the office of the Secretary thereof a certificate of its charter certified by the proper authority of the foreign State

or country and a statement of the amount of its capital stock authorized, and the amount actually issued, the character of the business which is to be transacted in the Territory, and the agent therein, who must be a domestic corporation or a natural person of full age actual resident in the Territory, together with the last place of abode, upon which agent process against said corporation may be served. Upon the filing of such copy and statement the Secretary of the Territory shall issue to such corporation a certificate that it is authorized to transact business in the Territory (sec. 102). Within thirty days after the filing of the above the charter must be published in some newspaper of general circulation in the county wherein resides the agent of the foreign corporation upon whom process may be served. Proof of such publication must be filed with the Secretary of the Territory within twenty days after the date of the last publication (sec. 135). Penalties are provided to the extent of \$200 for each offence (secs. 103 and 105; see also secs. 99, 100, 101, 104, and 106). Foreign corporations must file annual reports as are required of domestic corporations. The Secretary of the Territory charges foreign corporation for filing articles, 10 cents per thousand dollars of its authorized capital with a minimum charge of \$25; for filing statement naming agent, \$5; for making certified copy of statement naming agent, \$1.50; for filing proof of publication, \$5; for filing annual report after the first year, \$1.

## NEW YORK.

(The reference below, B. C. L., refers to Business Corporation Law, chap. 567, Laws of 1890, as amended by Laws of 1892, chap. 691. The reference G. C. L. refers to General Corporation Law, Laws of 1890, chap. 563, as amended by Laws of 1892, chap. 687. The reference S. C. L. refers to Stock Corporation Law, chap. 564, Laws of 1890, as amended by Laws of 1892, chap. 688.)

1. **Statutes under which Business Corporations may incorporate.** — The General Corporation Act is to be found in the Laws of 1890, chap. 563, and the acts amendatory thereof passed since that time. Reference must also be had to what is known as the Stock Corporation Law, embodied in the Laws of 1890, chap. 564, and subsequent amendments thereto. Finally, reference must also be had to the Business Corporation Act as embodied in the Laws of 1890, chap. 567, and amendments thereto. Parties may incorporate for any lawful business purpose or purposes. Special acts are provided for railway, banking, navigation, stage-coach, tramway, pipe-line, gas, electric light, water works, telegraph, telephone, turnpike, plank road and bridge companies, banks, insurance, savings and loan associations, mortgage, loan, safe deposit and investment companies.

2. **Incorporators.** — Three or more adult persons. Two-thirds must be citizens of the United States and at least one a resident of the State of New York (B. C. L., sec. 2; G. C. L., sec. 4).

*In re N. Y. L. E. & W. R. R. Co.*, 35 Hun, 220; 99 N. Y. 12; *King v. Barnes*, 109 N. Y. 267.

3. **Contents of Certificate of Incorporation** (Laws of 1903, chap. 525). — The certificate must set forth:

a. *Name.* — The name must not conflict with that of any existing domestic corporation or of any foreign corporation authorized to do business in the State. The words "trust," "bank," "banking," "insurance," "assurance,"

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"indemnity," "guaranty," "guarantee," "savings," "investment," "loan," or "benefit," cannot be used (G. C. L., sec. 6 ; B. C. L., sec. 2 ; Laws of 1904, chap. 110).

*De Long v. De Long Hook & Eye Co.*, 89 Hun, 399 ; *Am. Tartar Co. v. Am. Tartar Co.*, 57 App. Div. 411 ; *People ex rel. U. S. Grand Lodge v. Payn*, 161 N. Y. 229 ; *People ex rel. Blossom v. Nelson*, 46 N. Y. 477 ; *People ex rel. Davenport v. Rice*, 68 Hun, 24 ; *People ex rel. N. Y. Phonograph Co. v. Rice*, 128 N. Y. 591 ; *People ex rel. Eickemeyer Field Co. v. Rice*, 138 N. Y. 614.

*b. Purposes.* — Any number of objects may be inserted provided they are not covered by the special acts above referred to (B. C. L., sec. 2).

*Wilson v. Tennent*, 61 App. Div. 100 ; *People ex rel. Fairchild v. Preston*, 140 N. Y. 549 ; *U. S. Vinegar Co. v. Foehrenbach*, 148 N. Y. 58 ; *Chapman v. Lynch*, 156 N. Y. 551.

*c. Capital Stock.* — Amount of total authorized capital stock not less than \$500. If any proportion be preferred stock, the preference thereof must be set forth (B. C. L., sec. 2 ; S. C. L., sec. 47). A provision may be inserted authorizing the issue of the whole or any part of the capital stock as partly paid stock, subject to calls thereon until the whole thereof shall have been paid in. In such case, by inserting upon the stock certificate the amount paid thereon, the holder is exempt from any liability thereon, except for the payment to the corporation of the amount remaining unpaid upon such stock and for the statutory liability to employees (S. C. L., sec. 48 ; Laws of 1901, chap. 354).

*d. Shares.* — Number of shares with the par value, which must not be less than \$5 nor more than \$100 (B. C. L., sec. 12 ; Laws of 1903, chap. 525).

*e. Amount of Capital with which the Corporation will begin Business.* — This must not be less than \$500 (B. C. L., sec. 2).

*f. Domicile.* — State the village or town in which the principal business office is to be located (B. C. L., sec. 2, as amended by Laws of 1903, chap. 525). If in New York City, state the borough (Laws of 1903, chap. 525).

*People ex rel. Knickerbocker Press v. Barker*, 87 Hun, 341 ; 147 N. Y. 715 ; *People ex rel. Edison Electric Light Co. v. Barker*, 91 Hun, 594.

*g. Duration.* — May be perpetual if desired (B. C. L., sec. 2).

*h. Directors.* — Number and names of directors. There must be not less than three directors, and the names and post-office addresses of the directors for the first year must be set forth (B. C. L., sec. 2 ; G. C. L., sec. 29).

*Hamilton Trust Co. v. Clemes*, 163 N. Y. 423 ; *McDowell v. Sheehan*, 129 N. Y. 200 ; *Davidson v. Westchester Gas Light Co.*, 99 N. Y. 558.

*i. Stock Subscriptions by Incorporators.* — Names and post-office addresses of the incorporators, and a statement of the number of shares of stock subscribed for by each (B. C. L., sec. 2).

*Buffalo & Jamestown R. R. Co. v. Gifford*, 87 N. Y. 294 ; *Yonkers Gazette Co. v. Taylor*, 30 App. Div. 334.

*j. Provisions for the Regulation of the Internal Affairs of the Corporation.* — The certificate may contain any other provision for the regulation of the business and the conduct of the affairs of the corporation and any limitation upon the powers or upon the powers of the directors and stockholders which does not exempt them from any obligation or from the performance of any

duty imposed by law (B. C. L., sec. 2; Laws of 1903, chap. 525; see also G. C. L., sec. 10).

**4. Statutory Powers.**— In addition to the statutory enumeration of common law powers (G. C. L., sec. 11), the statute confers the following additional powers :

To purchase, hold, and dispose of the stock and bonds and other evidences of indebtedness of any other corporation (S. C. L., sec. 40).

Also to issue in exchange therefor its own stock and bonds if authorized so to do by a provision in the certificate of incorporation; or, without such provision in the certificate, if the corporation whose stock is so purchased is engaged in a business similar to that of the holding corporation, or engaged in the manufacture, use, or sale of the property, or in the construction or operation of works necessary or useful in the business of such holding corporation or in which or in connection with which the manufactured article, produce, or property of the holding corporation may be used, or is a corporation with which the latter is authorized to consolidate (S. C. L., sec. 40).

To vote by proxy (G. C. L., sec. 21).

To issue preferred stock (S. C. L., sec. 47).

To enforce a lien upon the stock of its members for debts due the corporation (S. C. L., sec. 40).

To sell stock subscribed for non-payment of stock subscriptions (S. C. L., sec. 43).

To acquire or dispose of property in other States or foreign countries (G. C. L., sec. 14).

To consolidate with other corporations organized to carry on any kind of business of the same or a similar nature which a corporation organized under the General Act might carry on (S. C. L., sec. 3; S. C. L., sec. 58; B. C. L., secs. 4, 8, 9, 10, 11, 12).

To provide for cumulative voting (G. C. L., sec. 20).

To delegate the right to directors to adopt by-laws (B. C. L., sec. 2; G. C. L., sec. 29).

To fix a quorum of directors less than a majority of the board (G. C. L., sec. 29).

To classify directors (S. C. L., sec. 20).

To issue stock in exchange for property (S. C. L., sec. 42).

To sell all the corporate assets (S. C. L., sec. 58; S. C. L., sec. 83).

To guarantee bonds of other domestic corporations engaged in the same line of business (S. C. L., sec. 40)

Voting trusts limited to five years are permitted (G. C. L., sec. 20).

To borrow money and mortgage and pledge the corporate assets (S. C. L., sec. 2; Laws of 1905, chap. 745; see also generally G. C. L., sec. 19).

**5. Procuring the Charter.**— The certificate of incorporation must be acknowledged by each of the incorporators before some officer authorized to administer oaths. It must then be filed and recorded in the office of the Secretary of State. A certified copy of the certificate or a duplicate original, together with the receipt of the State Treasurer for payment of the organization tax, must be filed and recorded in the office of the county clerk of the county where the principal place of business of the corporation is to be located (B. C. L., sec. 2; G. C. L., secs. 4, 5).

People *ex rel.* Blossom *v.* Nelson, 46 N. Y. 477; Raisbeck *v.* Oesterricher, 4 Abb. New Cases, 434; People *ex rel.* *v.* Rice, 128 N. Y. 591; 28 N. E. 251; *Launming v. Galusha*, 81 Hun, 247; 30 N. Y. S. 767; *aff'd* 151 N. Y. 648; 45 N. E. 1132; *Union S.*

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*Co. v. City of Buffalo*, 82 N. Y. 351; *N. Y. Car Oil Co. v. Richmond*, 6 Bosw. 213; *Western Transportation Co. v. Schen*, 19 N. Y. 408; *Oswego Starch Factory v. Olloway*, 21 N. Y. 449; *Jessup v. Carnegie*, 80 N. Y. 441; *Eaton v. Aspinwall*, 19 N. Y. 121; *Card. v. Moore*, 68 App. Div. 327; *People v. O'Brien*, 101 App. Div. 296; 91 N. Y. Sup. 649.

**6. Corporate Indebtedness.** — There is no limitation upon the amount of indebtedness which a corporation may incur. The capital stock cannot, however, be reduced below the amount of the corporation's debts and liabilities (S. C. L., sec. 44). All corporate mortgages except purchase-money mortgages must be consented to by the holders of not less than two-thirds of the capital stock of the corporation, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose upon the same notice as is required for the annual meeting of the corporation, and a certificate under the seal of the corporation that such consent was given by the stockholders in writing or that it was given by a vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or vice-president and by the secretary or assistant secretary of the corporation, and shall be filed and recorded in the office of the clerk or register of the county wherein the corporation has its principal place of business. When authorized by such consent, the directors may confer on the holders of any debt secured by such mortgage the right to convert the principal thereof after two, and not more than twelve years after the date of the mortgage into stock of the corporation (S. C. L., sec. 2).

*Strong v. R. R. Co.*, 93 N. Y. 426.

**7. Organization Tax.** — One-twentieth of one per cent (or 50 cents per thousand) upon the authorized capital stock as set forth in the certificate of incorporation (Tax Law, sec. 180; G. C. L., sec. 5).

*People ex rel. Eickemeyer Field Co. v. Rice*, 138 N. Y. 614; *People v. R. R. Co.*, 129 N. Y. 474; *People v. R. R. Co.*, 129 N. Y. 654; *In re C. K. C. S. & R. Co.*, 13 App. Div. 50.

**8. Filing and Recording Fees.** — To the Secretary of State for filing certificate of incorporation, \$10; for recording, 15 cents per folio; for certified copy of articles, 15 cents per folio, and \$1 additional for certificate, under the Great Seal of the State; for recording certificate of payment of capital stock, 15 cents per folio; to the county clerk for filing certificate, 6 cents, and for recording, 10 cents per folio.

**9. Commencing Business.** — At least \$500 of stock must be subscribed before the corporation may begin business. Before any corporation can incur debts the amount of capital specified in the certificate of incorporation as the amount of capital with which the corporation will begin business must have been paid in, either in money or in property. One-half of the stock must be paid in, either in money or property, within one year. Within thirty days after such payment a certificate duly signed and verified by a majority of the directors and the president or vice-president and the secretary or treasurer must be filed with the Secretary of State and with the clerk of the county in which the principal office is located. If one-half the capital is not paid in within one year, the charter is subject to forfeiture (B. C. L., sec. 5). The charter is subject to forfeiture if use is not made of the corporate franchises within two

years after incorporation (B. C. L., secs. 2, 3; S. C. L., sec. 42; G. C. L., sec. 31).

*People v. B. S. & C. Co.*, 131 N. Y. 140; *People v. U. & D. R. R. Co.*, 128 N. Y. 240; *Denike v. N. Y.*, etc. Lime Co., 80 N. Y. 599; *Matter Brooklyn El. R. R. Co.*, 125 N. Y. 434; *Hardinan v. Sage*, 124 N. Y. 25; *Vedder v. Mudgett*, 95 N. Y. 295; *Brown v. Smith*, 13 Hun, 408; 80 N. Y. 650.

**10. Organization Meeting.**—The organization meeting must be held within the State, and within two years after the date of incorporation (G. C. L., sec. 31).

**11. Meetings of Stockholders and Directors.**—While there are no statutory requirements as to holding either stockholders' or directors' meetings within the State, it is the general practice as well as unquestionably the only safe practice to hold all stockholders' meetings within the State. (See *Ormsby v. Company*, 56 N. Y. 623.) Directors' meetings, however, may be held without the State by making provision to this effect in the by-laws.

The corporation may by its by-laws fix the amount of stock which must be represented at meetings of the stockholders in order to constitute a quorum (G. C. L., sec. 11). Unless otherwise provided in the certificate of incorporation, every stockholder of record of a stock corporation shall be entitled at every meeting of the corporation to one vote for every share of stock standing in his name on the books of the corporation; and at every meeting of a non-stock corporation, every member, unless disqualified by the by-laws, shall be entitled to one vote. The stockholders of a stock corporation, by a by-law adopted by vote at any annual meeting, or at any special meeting duly called for such purpose, may prescribe a period not exceeding forty days prior to meetings of the stockholders, during which no transfer of stock on the books of the corporation may be made. Except in cases of express trust or in which other provision shall have been made by written agreement between the parties, the record holder of stock which shall be held by him as security, or which shall actually belong to another upon demand therefor and payment of necessary expenses thereof, shall issue to such pledgor or to such actual owner of such stock a proxy to vote thereon. The certificate of incorporation of any stock corporation may provide that at all elections of directors of such corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two of them as he may see fit, which right, when exercised, shall be termed cumulative voting. The stockholders of a corporation heretofore formed, who, by the provisions of laws existing on April 30, 1891, were entitled to the exercise of such right, may hereafter exercise such right according to the provisions of this section. A stockholder may, by agreement in writing, transfer his stock to any person or persons for the purpose of vesting in him or them the right to vote thereon for a time not exceeding five years upon terms and conditions stated, pursuant to which said person or persons shall act; every other stockholder, upon his request therefor, may by a like agreement in writing also transfer his stock to the same person or persons, and thereupon may participate in the terms, conditions, and privileges of such agreement; the certificates of stock so transferred shall be surrendered and cancelled, and certificates therefor issued to such transferee or transferees in which it shall appear that they are issued pursuant to such agreement; and in the entry of such transferee or transferees as owners of such stock in the proper books

of said corporation that fact shall also be noted, and thereupon he or they may vote upon the stock so transferred during the time in such agreement specified; a duplicate of every such agreement shall be filed in the office of the corporation where its business is transacted and be open to the inspection of any stockholder daily, during business hours. No member of a corporation shall sell his vote or issue a proxy to vote to any person for any sum of money or anything of value. The books and papers containing the record of membership of the corporation shall be produced at any meeting of its members, upon the request of any member. If the right to vote at any such meeting shall be challenged, the inspectors of election or other persons presiding thereat shall require such books, if they can be had, to be produced as evidence of the right of the person challenged to vote at such meeting, and all persons who may appear from such books to be members of the corporation may vote at such meeting, in person or by proxy, subject to the provisions of this chapter (G. C. L., sec. 20, as amended by Laws of 1892, chap. 687, and Laws of 1901, chap. 355).

Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy. No officer, clerk, teller, or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation. Every proxy must be executed in writing by the member himself or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which proxies may be executed (G. C. L., sec. 21).

If the directors shall not be elected on the day designated in the by-laws or by-law, the corporation shall not for that reason be dissolved, but every director shall continue to hold his office and discharge his duties until his successor has been elected (G. C. L., sec. 23).

The directors of every stock corporation shall be chosen at the time and place fixed by the by-laws of the corporation by a plurality of the votes at such election. Each director shall be a stockholder unless otherwise provided in the certificate, or in a by-law adopted by a stockholders' meeting. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws. Notice of the time and place of holding any election of directors shall be given by publication thereof at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policy holders of an insurance corporation shall be eligible to election as directors. At least one-fourth in number of the directors of every stock corporation shall be elected annually (S. C. L., sec. 20).

*Ormsby v. V. C. M. Co.*, 26 N. Y. 623.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — Minimum number of directors under the statute are three. At least one-fourth of them must be elected annually. They must all be stockholders unless otherwise provided in the certificate of incorporation or in the by-laws. At least one of them must be a resident of New York (B. C. L., sec. 2; G. C. L.,



sec. 29 § S. C. L., sec. 20). They may be classified if desired. Inspectors of elections are provided for (S. C. L., sec. 28). Cumulative voting is permitted if authorized by the certificate of incorporation (G. C. L., sec. 20). Directors have power to adopt by-laws for their own government subject to the provisions of the by-laws adopted by the stockholders; this too, in the absence of express power to that effect conferred in the certificate of incorporation (G. C. L., secs. 11, 29). In the certificate of incorporation power may be given to the directors to adopt all by-laws for the government of the corporation (B. C. L., sec. 2; G. C. L., sec. 10; Laws of 1903, chap. 525). Unless otherwise provided by law, a majority of the board of directors of a corporation at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business, and the act of a majority of the directors at a meeting at which a quorum shall be present, shall be the act of the board of directors. The stockholders may in the by-laws fix the number of directors necessary to constitute a quorum at a number less than a majority of the board, but at least equal to one-third of such board (G. C. L., sec. 29). The act provides that no by-law adopted by the board of directors regulating the election of directors or officers shall be valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held and at least thirty days before such election (G. C. L., sec. 11; see *Wood v. Knapp*, 100 N. Y. 10).

*Marshall v. Ind. Federation*, 84 N. Y. Sup. 866; *Joseph v. Raff*, 176 N. Y. 611; 68 N. E. 1118.

*b. Liabilities.* — In case of the withdrawal of any of the capital by means of loans to officers or stockholders of the corporation, or prohibited transfers of property, or false reports issued, directors are jointly and severally liable for the loss sustained thereby. They are also liable for illegal declaration of dividends (S. C. L., secs. 22, 23, 25, 31, 34, 48).

*United Growers Co. v. Eisner*, 22 App. Div. 1; *Chem. Nat. Bank v. Colwell*, 132 N. Y. 250; *Beardsley v. Johnson*, 121 N. Y. 224; *In re Newcomb*, 42 St. Rep. 442; *Matter of Elias*, 17 Misc. 718; *Sinclair v. Fuller*, 158 N. Y. 607.

**13. Stockholders' Liabilities.** — Stockholders are personally liable to creditors to an amount equal to the amount of unpaid stock held by them for debts of the corporation contracted while such stock was held by them, and are jointly and severally liable for all debts due or owing to laborers or servants or employees other than contractors, provided written notice of intention to enforce such liability is given within thirty days after termination of the services rendered (S. C. L., secs. 54, 55). Every corporation formed under this chapter may be or become a full liability corporation by inserting a statement in the certificate of incorporation, that the corporation thereby formed is intended to be a full liability corporation; and in case of an existing corporation, which is not a full liability corporation, it may become such by filing in the office where certificates of incorporation are required to be filed a supplemental certificate stating that thereafter the corporation intends to be a full liability corporation, which certificate shall be executed and acknowledged by the president and treasurer of the corporation or by the board of directors, and shall have annexed thereto a copy of a resolution, adopted by a two-thirds vote of the board of directors, and the written consent of all the stockholders of the corporation authorizing and consenting to the change of the corporation to a full liability corporation. If the corporation is formed as or becomes a full liability corporation, all the stockholders

of the corporation shall be severally individually liable to its creditors for all its debts and liabilities and may be joined as defendants in any action against it. No execution shall issue against any stockholder individually until execution has issued against the corporation and returned unsatisfied, and all the stockholders shall contribute a proportionate share, according to the number of shares of stock owned by each of the amount paid by any stockholder on a judgment recovered against him individually for a debt of the corporation, and he may recover from the other stockholders in the corporation in a joint or several action the proper portion due by them and each of them, of the amount paid by him on any such judgment (B. C. L., sec. 6).

*Billings v. Robinson*, 94 N. Y. 415; *Weeks v. Love*, 50 N. Y. 568; *Tucker v. Gilman*, 121 N. Y. 189; 24 N. E. 302; *Close v. Potter*, 155 N. Y. 145; *Herbert v. Duryea*, 34 App. Div. 478; *Bristor v. Smith*, 158 N. Y. 157; *White, Corbin & Co. v. Jones*, 45 App. Div. 241; *Natl. Tube Works v. Giffillan*, 124 N. Y. 302; *Sinclair v. Fuller*, 158 N. Y. 607; *Mooseburger v. Walsh*, 89 Hun, 564; *Walton v. Coe*, 110 N. Y. 109; *Cochran v. Wiechers*, 119 N. Y. 399.

**14. Stock Certificates.** — Stock certificates must be signed by the president or vice-president, and by the secretary or treasurer (S. C. L., sec. 40). Stock certificates are not transferable without the consent of the corporation, until all indebtedness to the corporation has been paid (S. C. L., sec. 26). The par value of shares may be any amount not less than \$5 nor more than \$100 (B. C. L., sec. 2, sub. 4). A tax is imposed on all sales or agreements to sell or deals or transfers of shares of certificates of stock in any domestic or foreign corporation made after June 1, 1905, whether made upon or shown by the books thereof, or by any assignment in blank, or by delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or the future transfer of stock, on every \$100 of face value or fraction thereof, of 2 cents. In case of violation of the foregoing provision a penalty is provided of fine or imprisonment or both (Laws of 1905, chap. 241).

*Reno Oil Co. v. Culver*, 60 App. Div. 129; *Yonkers Gazette Co. v. Taylor*, 30 App. Div. 334; *Sullivan County Club v. Butler*, 26 N. Y. Misc. 306; *Reyder v. Bushwick R. R. Co.*, 134 N. Y. 83.

**15. Preferred Stock.** — Preferred stock may be issued if the certificate of incorporation so provides or by consent of the holders of two-thirds of the capital stock given at a meeting duly called for that purpose. The corporation may, upon the written request of the holders of preferred stock by a two-thirds vote of its directors, exchange the same for common stock (S. C. L., sec. 47). Every domestic stock corporation may issue preferred stock and common stock and different classes of preferred stock, if the certificate of incorporation so provides, or by the consent of the holders of records of two-thirds of the capital stock, given at a meeting called for that purpose upon notice such as is required for the annual meeting of the corporation. A certificate of the proceedings of such meeting, signed and sworn to by the president or a vice-president, and by the secretary or assistant secretary of the corporation, shall be filed and recorded in the offices where the original certificates of incorporation of such corporation was filed and recorded; and the corporation may upon the written request of the holders of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, upon such valuation

as may have been agreed upon in the certificate of organization of such corporation, or the issue of such preferred stock, or share for share, but the total amount of such capital stock shall not be increased thereby.

*Hinckley v. Company*, 91 N. Y. Sup. 893; 45 N. Y. Misc. Rep. 176; *Campbell v. A. Z. Co.*, 122 N. Y. 455; *Kent v. O. M. Co.*, 78 N. Y. 159; *Mich. Bank v. N. Y. & N. H. R. R. Co.*, 13 N. Y. 599; *Ernst v. Company*, 24 N. Y. Misc. 583.

**16. Payment of Capital Stock.** — Corporations cannot issue stock except for money, labor done, or property actually received for the use or lawful purposes of the corporation. The statute provides further that in the absence of fraud in the transaction the judgment of the directors as to the value of property so purchased shall be conclusive (S. C. L., sec. 42). The original or amended certificate of incorporation may contain a provision expressly authorizing the sale of the whole or any part of the capital stock as partly paid stock subject to calls thereon until the whole thereof shall have been paid in. In such case, if in or upon the certificate issued to represent said stock the amount paid thereon shall be specified, the holder thereof shall not be subject to any liability except for the payment to the corporation of the amount remaining unpaid upon such stock and for the payment of indebtedness to employees. In any such case the corporation may declare and may pay dividends upon the basis of the amounts actually paid upon the respective shares of stock, instead of upon the par value thereof (S. C. L., sec. 62). If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock at the time of subscribing. Every stockholder whose subscription is payable in money shall pay to the directors ten per cent upon the amount subscribed by him in cash, and no such certificate shall be received without such payment (S. C. L., sec. 47; see also S. C. L., sec. 43 as to forfeiture of stock for non-payment of subscription).

*White, Corbin & Co. v. Jones*, 167 N. Y. 158; 60 N. E. 422; *Martin v. Company*, 95 App. Div. 18; 88 N. Y. Sup. 573; *O. D. C. M. Co. v. Lewisohn*, 136 Fed. 915; *McBride v. Farrington*, 131 Fed. 797; *F. C. N. Bank v. Shire*, 179 N. Y. 587; 72 N. E. 1141; *Close v. Noye*, 147 N. Y. 597; *Rafferty v. Company*, 37 App. Div. 618; *Herbert v. Duryea*, 34 App. Div. 478; *Drake v. Company*, 26 App. Div. 499.

**17. Books.** — Every corporation must keep at its office within the State correct books of account of all its business transactions, and also a stock book containing an alphabetical list of the stockholders of the corporation, showing their places of residence and the number of shares held by them respectively, the time when they respectively became owners thereof, and the amount paid thereon (S. C. L., sec. 29). The stock book is open to the inspection of stockholders and judgment creditors.

*Matter of Steinway*, 159 N. Y. 250; 53 N. E. 1103.

**18. Office.** — Every corporation must maintain a domiciliary office within the State (B. C. L., sec. 2; Tax Laws, sec. 11).

*Conroe v. Company*, 10 Hun Pr. 405; *Rossie Iron Works v. Westbrook*, 36 N. Y. St. Rep. 555.

**19. Reports.** — All domestic business corporations must annually during the month of January, or, if doing business without the United States, before the month of May, make a report as of the first day of January, which will state: (1) The amount of its capital stock and proportion actually issued.

(2) The amount of its debts or an amount which they do not exceed. (3) The amount of its assets or an amount which its assets at least equal. (4) The names and addresses of all of the directors and officers of the company, and in the case of a foreign corporation, the name also of a person designated in the manner prescribed by the code of civil procedure as the person upon whom process against the corporation may be served within the State (S. C. L., sec. 30; Laws of 1905, chap. 415). Such report to be made by the president or vice-president, secretary or treasurer, and filed in the office of the Secretary of State. If such report is not made and filed, any officer of the corporation who shall thereafter neglect or refuse to make and file such report within ten days after written request so to do shall have been made by a stockholder or a creditor of the corporation, shall forfeit to the people the sum of \$50 for every day he shall so neglect or refuse. In addition to the foregoing the corporation is required between November 1st and 15th to make an annual report to the State comptroller showing the condition of the business on October 31st of that year, stating the amount of the capital stock paid in, the amount of its dividends declared during the year ending October 31st of that year, the amount of its entire capital, and the percentage thereof employed within the State during the preceding year. This report must be signed and sworn to by the president, vice-president, secretary or treasurer (S. C. L., sec. 30; Tax Laws, sec. 189). After each annual election of directors a certificate of the result of such election made by the inspectors must be filed, with the oath of the inspectors, in the office of the clerk of the county in which the election is held (S. C. L., sec. 28; see *Union Nat. Bank v. Scott*, 53 App. Div. 65; see also S. C. L., sec. 52). The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June 15th, deliver to one of the assessors of the tax district in which the company is liable to be taxed, and, if such tax district is in a county embracing a portion of the forest preserve, to the Comptroller of the State, a written statement specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated, and, unless a railroad corporation, the sums actually paid therefor.

2. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real property and the amount of such capital stock held by the State and by any incorporated literary or charitable institution, and

3. The tax district in which the principal office of the company is situated or, in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after the 15th day of June, or is insufficient, evasive, or defective, the assessors may compel the corporation to make a proper statement by mandamus (Revised Tax Law of 1896, chap. 908, sec. 27).

Stockholders owning five per centum of the capital stock of any corporation other than a moneyed corporation, not exceeding \$100,000, or three per centum where it exceeds \$100,000, may demand a written statement of its affairs under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person presenting the request within thirty days thereafter, and keep on file for twelve

months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer or such chief fiscal officer shall not be required to deliver more than one such statement in any one year. The supreme court or any justice thereof may upon application, for good cause shown, extend the time for making and delivering such certificate. For every neglect or refusal of the treasurer or other chief fiscal officer thereof to comply with the provisions of this section, he shall forfeit and pay to the person making such request the sum of \$50 and the further sum of \$10 for every twenty-four hours thereafter until such statement shall be furnished (S. C. L., sec. 52).

*H. B. Co. v. Hand*, 104 App. Div. 390; 93 N. Y. Sup. 834; *Davidson v. Whithouse*, 94 N. Y. Sup. 428.

**20. Anti-Trust Statute.** — The Anti-Trust Act of New York is to be found in Laws of 1899, chap. 690.

*Matter of Davies*, 168 N. Y. 89; 61 N. E. 118; *People v. Milk Exchange*, 133 N. Y. 565; 30 N. E. 850.

**21. Statutory Grounds for Forfeiture of Charter.** — Charters may be forfeited for failure to organize and commence the transaction of corporate business or the discharge of corporate duties within two years from the date of incorporation (G. C. L., sec. 31). Also if one-half the capital stock is not paid in within one year (B. C. L., sec. 5). Also for failure to pay the annual State tax within one year from the time a statement of the tax is sent to it (Tax Law, sec. 200; see also Code of Civ. Pro., secs. 1797-1803 inclusive).

*Day v. Company*, 107 N. Y. 129; 13 N. E. 765; *People v. Company*, 131 N. Y. 140; 29 N. E. 947.

**22. Annual Franchise Tax.** — The annual franchise tax is based on the amount of capital stock actually employed within the State. It includes, with some few exceptions, all personalty belonging to the corporation within the State and the corporate good-will. The debts of the corporation are first deducted in arriving at the valuation. If dividends are declared amounting to six per cent or more on the amount of the par value of the entire issued capital stock, the tax is one-fourth of a mill for each one per cent of dividends, declared on each dollar of capital stock employed within the State. If dividends are less than six per cent on par value, one and one-half mills per dollar upon such proportion of capital stock at par as the amount of capital employed within the State bears to the entire capital of the corporation. If no dividend is declared, the tax is fixed at the rate of one and one-half mills upon each dollar of the appraised capital employed within the State. Banks, insurance and surety companies, railroad, gas, light, or power, steam heat, agricultural and horticultural corporations, and surface railroads not operated by steam are exempt. Laundry, manufacturing corporations, to the extent only of the capital stock employed within the State in manufacturing and in the sale of the product of such manufacturing, and mining corporations wholly engaged in mining ores within the State, are exempt from this tax provided at least forty per cent of their capital stock is actually invested in property in this State (Tax Laws, secs. 182, 183, 189, 190). A corporation is taxed on its personal property only in the county designated in the articles as the place where its principal place of business is (Tax Laws, sec. 12). It will be observed that for the purpose of imposing the annual franchise tax, business corporations are divided into two classes: first, corporations in which

dividends at the rate of six per cent per annum or more have been declared on the capital stock; and second, corporations with dividends of less than six per cent or those in which no dividends have been declared on the capital stock. The Court of Appeals in a recent case (*People ex rel. Jewellers' Publishing Co. v. Roberts*, 155 N. Y. 4), observed, that when the tax is based upon dividends of six per cent or more, it is upon the capital stock at par value, but when no dividend or dividends of less than six per cent have been declared it must be ascertained upon the appraised capital. The Court added: "It appears to us that the meaning of this statute is clear. The distinction made between share stock and capital stock in other cases in the construction of other statutes, is, in this statute, fully recognized. 'Capital stock' on its par value is known in other cases as 'share' stock, while 'appraised' capital is known as 'capital' stock." The annual franchise tax in its practical operation works as follows: domestic corporations having all of their capital stock employed within the State, and which have declared dividends upon its share stock at the rate of six per cent per annum or more, is ascertained annually on the amount of its share stock at par without regard to the corporate value of the property often referred to as the capital stock of the corporation. Thus, if the dividend is at the rate of six per cent, taxes would amount to 15 cents on each hundred dollars of share stock issued and outstanding. Again, if all of the corporation's capital is not employed within the State, then the tax is computed upon a different basis. In the latter case the amount is determined by aggregating the entire corporate capital both in and out of the State, and ascertaining the proportion of such capital that is employed within the State. Under the law, the tax is based upon the proportion of the whole amount of share stock issued and outstanding at par, as the capital issued and employed within the State bears to the total capital of a corporation. To illustrate, assume that the entire capital of the corporation after deducting the corporate debts is \$500,000, of which \$100,000 is represented by corporate assets issued and employed within the State of New York, and that the total amount of the corporation's share stock issued and outstanding is \$250,000. The annual franchise tax would then be based upon a proportionate amount of share stock to be ascertained by working out the following proportion: \$500,000 (total corporate assets) is to \$100,000 (assets within the State of New York) as \$250,000 (total share stock issued and outstanding) is to the amount of share stock subject to the annual license tax; which proportion being worked out mathematically produces the sum of \$200,000, upon which to base an assessment for the annual franchise tax. Thus if such a corporation had paid dividends of eight per cent per annum, it would have under such circumstances to pay an annual franchise tax at the rate of 20 cents on each hundred dollars of its share stock, amounting on the \$200,000 of share stock to the sum of \$400.

Now, let us turn our attention to the assessment of the annual franchise tax on corporations which have paid dividends of less than six per cent or no dividends at all.

Where the corporation has paid no dividends, or dividends of less than six per cent per annum, the tax is computed upon the basis of the appraised capital stock employed in the State, the provisions of the statute being as follows:

"In case no dividend has been declared by a corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter, the treasurer or secretary of the company shall,

under oath, between the first and fifteenth day of November in each year, estimate and appraise the capital stock of such company upon which no dividend has been declared, or upon which the dividend amounted to less than six per centum of its actual value in cash: not less, however, than the average price which said stock sold for during said year, and shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned, he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties, and interest to be paid to the State" (Tax Laws, sec. 190).

"It will be seen that this section directs that where dividends of less than six per cent have been paid, the actual value of the stock is to be returned to the comptroller and finally determined by him, and that the taxes are to be settled on the valuation so made. The provisions are plainly inconsistent with those of section 182 if the earlier section is to be given the construction that has hitherto prevailed. We think, however, that construction is erroneous and that there is no necessary inconsistency between these sections. We have admitted that the phraseology of the earlier section is ambiguous and confusing, but taken in connection with the provisions of section 190, we think its meaning fairly plain. It is to be borne in mind that the statute contemplates that the whole capital stock of a corporation may not be employed within this State and that it seeks to impose a franchise tax proportionate to, or measured by, only that part of the capital which is so employed. The direction that the tax shall be 'upon such proportion of the capital stock at par as the amount of capital employed within this State bears to the entire capital of the corporation' was not intended to establish or fix the rate at which such capital stock was to be assessed, but a rule for the computation of the amount of capital stock on which assessment was to be made. An illustration may possibly make our meaning more clear. A corporation with the capital stock of \$500,000 par value, might have assets of the value of \$250,000, of which \$150,000 were employed in business in this State. In such a case if the corporation had no peculiar franchise or exceptional good-will or earning power, the market value of its stock would approximate to 50, but if the company were well managed it might be 60 or 70. In computations for a franchise tax it would not be reasonable to estimate the \$150,000 of assets at 70, the market value of the share stock, nor even at their full value. The assets employed in this State would be three-fifths of the total assets of the corporation; therefore three-fifths of the share capital of the corporation, or \$300,000, should be considered as being employed within this State. It is this rule that the statute intended to prescribe by the provision that the tax shall be 'upon such portion of the capital stock at par as the amount of the capital employed within this State bears to the entire capital of the corporation.' But having determined that \$300,000 of capital stock is to be deemed as employed within this State, then that capital stock is, under section 190, to be taken as 'its actual cash value' for the purpose of computing the franchise tax." *People ex rel. N. Y. & E. R. F. Co. v. Roberts*, 168 N. Y. 14, 17.

*People ex rel. U. V. C. Co. v. Roberts*, 156 N. Y. 585; *People ex rel. E. E. L. Co. v. Campbell*, 138 N. Y. 543; *People ex rel. A. C. & D. Co. v. Wemple*, 129 N. Y. 558; *People ex rel. B. R. T. Co. v. Morgan*, 57 App. Div. 335; *People ex rel. Am. Sur. Co. v. Campbell*, 74 Hun, 101; 143 N. Y. 625; *People ex rel. Klipstein v. Roberts*, 36 App. Div. 597; 167 N. Y. 617; *People ex rel. Am. Soda F. Co. v. Roberts*, 158 N. Y. 168.

**23. Amendments.** — If the certificate of incorporation contains any matter not authorized by law to be stated therein, or if the proof or acknowledgment thereof shall be defective, either the incorporators or directors of the corporation may make and file an amended certificate correcting such informality or defect or striking out such unauthorized matter. The supreme court may, upon due cause shown and proof made, and upon notice to the Attorney-General and such other persons as the court may direct, and upon such terms and conditions as it may impose, amend any certificate of incorporation which fails to express the true object and purpose of the certificate so as to truly set forth such object and purpose (Laws of 1890, chap. 563, as amended by Laws of 1893, chap. 687).

To change the corporate name requires a petition to the supreme court, special term, held in the judicial district in which the corporation's principal business office is situated. The petition must have annexed thereto a certificate of the Secretary of State, that the name which such corporation proposes to assume is not the name of any other domestic corporation. The petition must be in writing signed and verified in like manner as a pleading by an officer of the corporation (usually the president), and must specify the present name of the corporation as well as the name it proposes to assume. Notice of the presentation of the petition to the court must be published once in each week for six successive weeks in two newspapers. A copy of the petition and notice of motion must be filed with the Secretary of State prior to the commencement of publication of such notice. If the court is satisfied that the petition should be granted, it then makes an order authorizing the petitioner to assume the name proposed on a day specified not less than thirty days after the entry of the order. The order and the papers on which it was granted must be filed within ten days thereafter in the clerk's office of the county in which the original certificate of incorporation was filed, and a certified copy of such order must within ten days after the entry thereof be filed in the office of the Secretary of State. Such order must also direct the publication within ten days after the entry thereof of the order in a designated newspaper once in each week for four successive weeks. If the order is fully complied with, and if within forty days after the making of the order an affidavit to the publication thereof shall be filed and recorded in the office in which the order is entered, and in each office in which certified copies are required to be filed, if any, the petitioner shall, on and after the day specified for that purpose in the order, be known by its new corporate name (Code of Civil Procedure, 2411-2415 inclusive).

To change the number of directors requires the vote of a majority of the stock of the corporation at a meeting held at the usual place of meeting of the directors, on two weeks' notice in writing to each stockholder of record. Such notice may be served personally or by mail. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of such corporation, and transcript thereof verified by the president and secretary of the meeting shall be filed in the office where the original certificates of incorporation were filed. Such change in the directorate may also be effected by unanimous consent without a meeting; in which case there shall be filed in the offices above specified the unanimous consent of the stockholders in writing signed by them or by their proxies, to which must be attached an affidavit of the custodian of the stock book of such corporation, stating that the persons who have signed such consent are the holders of record of the entire capital stock



of said corporation, issued and outstanding (Laws of 1890, chap. 564, as amended by Laws of 1892, chap. 688; by Laws of 1903, chap. 320; by Laws of 1904, chap. 307). If the number of directors be increased, the additional directors must be elected by a vote of a majority of the directors in office at the time of the increase (Laws of 1905, chap. 750).

Chapter 751, Laws of 1905, provides for amendment of the certificate of incorporation, so as to include therein the purposes, powers, or privileges which at the time of such alteration may be applied to corporations engaged in business of the same general character, or which might be included in the certificates of incorporation of a corporation organized under any general laws of the State for business of the same general character.

The amendment is effected by filing, in the manner provided for the original certificate of incorporation, an amended certificate executed by the president and secretary stating the alteration proposed, and that the same has been duly authorized by a vote of a majority of the directors, and also by a vote of stockholders representing at least three-fifths of the capital stock at a meeting of the stockholders called for the purpose in the manner provided in sec. 45 of chap. 688 of the Laws of 1892.

To increase or reduce the capital stock the same must be authorized either by the unanimous consent of the stockholders expressed in writing and filed in the office of the Secretary of State, and in the office of the clerk of the county in which the principal business office of the corporation is located, or by vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose in the manner provided by law or by the by-laws. Notice of the meeting, stating the time, place, and object, and the amount of the increase or reduction proposed, signed by the president or vice-president or secretary, shall be published once a week for at least two successive weeks in a newspaper in the county where the corporation's principal place of business is located, and a copy of such notice shall be duly mailed to each stockholder or member at his last known post-office address at least two weeks before the meeting, or shall be personally served on him at least five days before the meeting. At such meeting a majority of the stockholders must be present either in person or by proxy. A sufficient number of votes shall be given in favor of such increase or reduction, and if the same shall be authorized by the unanimous consent of the stockholders expressed in writing, a certificate of the proceedings showing the compliance to the provisions of law and the amount of capital theretofore authorized and the proportion thereof actually issued and the amount of the increased or reduced capital stock, and in the case of a reduction of capital stock the whole amount of the ascertained debts or liabilities of the corporation, shall be made and filed in the office of the clerk of the county where its principal place of business is located, and a duplicate thereof in the office of the Secretary of State. In case of the reduction of the capital stock the certificate of consent hereinbefore referred to must have endorsed thereon the approval of the comptroller to the effect that the reduced capital is sufficient for the proper purposes of the corporation and is in excess of its ascertained debts and liabilities. When the certificate of the unanimous consent of stockholders in writing, approved as aforesaid, has been filed, the capital stock of the corporation shall be increased or reduced as the case may be to the amount specified in such certificate or consent (Laws of 1890, chap. 564, as amended by Laws of 1892, chap. 688; Laws of 1901, chap. 354; Laws of 1902, chap. 286; Laws of 1903, chap. 700; Laws of 1904, chap. 123).

To increase or reduce the number of shares requires a two-thirds vote of all stock duly represented at a meeting held and conducted in like manner, and upon the filing of like certificate as required for the increase or reduction of its capital stock (Laws of 1893, chap. 196; Laws of 1901, chap. 354; see also G. C. L., secs. 6, 7; S. C. L., secs. 26, 32, 44, and 45; see also Laws of 1904, chap. 110). To change the location of the place of business the change must be authorized either by the unanimous consent of all the stockholders expressed in writing and duly acknowledged and filed in the office of the Secretary of State or by a vote of stockholders at a special meeting called for that purpose. The president and secretary and a majority of directors must sign a certificate stating the name of the corporation and stating the town and county where the principal office and place of business was originally located and to which it may have been subsequently changed, and the city, town, and county to which it is desired to change the same, and that it is the purpose of said corporation to actually transact and carry on its regular business at such place, and that such change has been authorized as provided by law, and the names of the directors and their places of residence. This certificate must be verified and acknowledged by all persons signing the same, and must be filed in the office of the Secretary of State, and a duplicate copy thereof in the office of the clerk of the county from which said present office or place of business is to be removed or changed, and entered in the office of the clerk of the county to which such removal or change is to be made (S. C. L., sec. 59; Laws of 1905, chap. 489).

24. **Extension of Corporate Existence.** — Corporate existence may be extended, if desired, by compliance with the statute (G. C. L., sec. 32). Corporate existence may be extended by consent of stockholders owning two-thirds in amount of the capital stock. This consent must be given either in writing or by a vote at a special meeting of the stockholders called for that purpose upon the same notice as is required for annual meetings. A certificate under the corporate seal must be prepared showing that such consent was given by the stockholders in writing, or that it was given by a vote at a special stockholders' meeting. This certificate must be subscribed and acknowledged by the president or the vice-president, and by the secretary or assistant secretary of the corporation, and must be filed and recorded in the office of the Secretary of State, and a certified copy of such certificate with a certificate of the Secretary of State of such filing and recording, or a duplicate original of such certificate, must be filed and recorded in the office of the clerk of the court of the county where the corporation has its principal place of business. The act also provides that the certificate of incorporation may require that the consent of stockholders owning a greater percentage than two-thirds of the stock shall be requisite to vote an extension of corporate existence (Laws of 1905, chap. 256).

25. **Dissolution.** — Voluntary dissolution may be brought about in two ways: first, by a two-thirds vote in interest of the stockholders favoring dissolution preceded by a resolution to that effect passed by the board of directors; second, by application to the supreme court (S. C. L., sec. 57; Revised Stat., Part III, chap. 8, title 4, secs. 66–89 inclusive; Code of Civil Procedure, secs. 1781–1796, 2419–2431). The charter may be surrendered by the incorporators before the payment of any part of the capital stock and before commencing business (Laws of 1904, chap. 296).

26. **Foreign Corporations.** — The General Corporation Law (secs. 15 and 16 of chap. 687, Laws of 1892, as amended by chap. 538, Laws of 1901, as amended by chap. 490, Laws of 1904) provides as follows:

§ 15. *Certificate of Authority of a Foreign Corporation.* — No foreign stock corporation other than a moneyed corporation shall do business in this State without having first procured from the Secretary of State a certificate that it has complied with all the requirements of law to authorize it to do business in this State, and that the business of the corporation to be carried on in this State is such as may be lawfully carried on by a corporation incorporated under the laws of this State for such or similar business, or if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The Secretary of State shall deliver such certificate to every such corporation so complying with the requirements of law. No such corporation now doing business in this State shall do business herein after December thirty-first, eighteen hundred and ninety-two, without having procured such certificate from the Secretary of State, but any lawful contract previously made by the corporation may be performed and enforced within the State subsequent to such date. No foreign stock corporation doing business in this State shall maintain any action in this State upon any contract made by it in this State unless prior to the making of such contract it shall have procured such certificate. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee or such foreign stock corporation, or under either of them. No certificate of authority shall be granted to any foreign corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, nor to any foreign corporation, other than a moneyed or insurance corporation, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," or "benefit," as a part of its name.

§ 16. *Proof to be filed before granting Certificate.* — Before granting such certificate the Secretary of State shall require every such foreign corporation to file in his office a sworn copy of its charter or certificate of incorporation, and a statement under its corporate seal, particularly setting forth the business or objects of the corporation which it is engaged in carrying on, or which it proposes to carry on, within the State, and a place within the State which is to be its principal place of business, and designating, in the manner prescribed in the Code of Civil Procedure, a person upon whom process against the corporation may be served within the State.

The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the State. Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this State.

If the person so designated dies, or removes from the place where the corporation has its principal place of business within the State, and the corporation does not within thirty days after such death or removal, designate in a like manner another person upon whom process against it may be served within the State, the Secretary of State may revoke the authority of the corporation to do business within the State, and process against the corporation in an action upon any liability incurred within this State before such revocation may, after such death or removal and before another designation is made, be served upon the Secretary of State.

The statement under the foregoing provisions must set forth the following, to wit:

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1. The business or objects of the corporation which it is engaged in carrying on, or which it proposes to carry on, within this State.

2. The place within the State which is to be its principal place of business.

3. The designation of a person upon whom process against the corporation may be served within the State. Such person must have an office or place of business at the place where the corporation has its principal place of business within the State.

The written consent of the person designated, duly acknowledged by such person, must also be attached.

Said statement must be executed in the name, and on behalf, of the corporation by an officer thereof.

The customary proof must be appended to the instrument, showing that the same was executed by authority of the corporation and proving the corporate seal. (See form.)

There must be annexed to the papers a copy of the charter or certificate of incorporation of the company, sworn to as a true copy thereof by an officer of the corporation.

All papers must be attached in convenient form for filing.

An acknowledgment or affidavit taken by a notary public in another State must be authenticated by a clerk of a court of record.

The filing fees are eleven dollars, under section 26 of the Executive Law (chap. 683, Laws of 1892), which sum must accompany the papers.

The papers when received will be referred to the State Comptroller, who will later communicate with the corporation, and adjust the tax under section 181, chapter 908, Laws of 1896.

Annual reports required as of domestic corporations. Stock book with data of stockholders must be kept at office of transfer agent in the State, and shall be open to inspection under penalty of \$250. Within thirteen months of the time the corporation commences to carry on business within the State it must pay the State Treasurer a license fee of one-eighth of one per cent on the amount of capital stock employed by it in the State during the first year of carrying on business therein. This license tax is payable annually thereafter (G. C. L., secs. 15, 16; S. C. L., secs. 53, 60; Code of Civ. Pro., secs. 432, 1779; Tax Laws, sec. 181; Laws of 1904, chap. 490).

*Demarest v. Flack*, 128 N. Y. 205; 28 N. E. 645; *People ex rel. H. & H. Co. v. Campbell*, 139 N. Y. 68; 34 N. E. 753; *People ex rel. S. T. Clock Co. v. Wemple*, 133 N. Y. 323; 31 N. E. 238; *People v. A. B. T. Co.*, 117 N. Y. 241; 22 N. E. 1057; *People ex rel. v. Wemple*, 138 N. Y. 582; 34 N. E. 386; *O'Reilly, Skelly & Fogarty Co. v. Greene*, 40 N. Y. 360; *People v. Kelsey*, 93 N. Y. Sup. 971; *People v. Miller*, 94 N. Y. Sup. 193; *Tyng v. Company*, 93 N. Y. Sup. 928; *Fay v. Company*, 94 N. Y. Sup. 628; *Miller v. Quincy*, 179 N. Y. 294; 72 N. E. 116; *P. C. Company v. McKeever*, 93 App. Div. 303; 87 N. Y. Sup. 869; *Bischoff v. Company*, 97 App. Div. 17; 89 N. Y. Sup. 594; *Harvard Co. v. Wicht*, 91 N. Y. Sup. 48; 99 App. Div. 507; *A. C. P. Co. v. Bagge*, 91 N. Y. Sup. 73.

## NORTH CAROLINA.

(The references cited below are to chap. 2, Laws of 1901, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of North Carolina is to be found in the Session Laws of 1901, chap. 2. Under this act corporations may be formed

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for any purpose excepting railroad, insurance, and banking corporations (sec. 8).

2. **Incorporators.** — Any number of persons not less than three. There are no residential requirements (secs. 8, 36).

3. **Contents of the Certificate of Incorporation.** — The certificate must set forth :

a. *Name.* — No name can be used already in use by another domestic corporation. The name must end with the word "Company" (sec. 8, sub. 1; Laws of 1903, chap. 453).

b. *Domicile.* — Location of principal office within the State (sec. 8, sub. 2).

c. *Purposes.* — The object or objects for which the corporation is formed. Any number of purposes may be inserted in the certificate (sec. 2, sub. 3).

d. *Capital Stock.* — Authorized capital stock (unlimited). Number of shares into which divided, and par value (any amount) thereof, amount of capital stock with which corporation will begin business (no amount limited in the act). If there is more than one class of stock, a description of all classes must be inserted together with terms upon which created (sec. 8, sub. 4).

e. *Stock Subscriptions.* — Names and post-office addresses of subscribers for stock and the number of shares subscribed by each. The act provides that the aggregate of such subscriptions shall be the amount of capital stock with which the corporation will begin business (sec. 8, sub. 5).

f. *Duration.* — May be perpetual (sec. 8, sub. 6).

g. *Provisions for the Regulation of the Internal Affairs of the Corporation.* — Provisions may be inserted for the regulation of the business and for the purpose of creating, defining, limiting, or regulating the powers of the corporation, directors, and stockholders (sec. 8, sub. 7).

4. **Statutory Powers.** — In addition to a statutory enumeration of common law powers corporations have the following additional powers: To authorize voting by proxy; to forfeit stock for non-payment of assessments; to provide suitable penalties for violation of by-laws, not exceeding \$20 for any one offence; to delegate the power to directors to adopt by-laws; to issue preferred stock to the extent of one-half of actual capital paid in in cash or property and to make the same subject to redemption; to authorize the holding of directors' meetings and keeping of corporate books, except stock and transfer books, outside of the State; to classify directors; to permit cumulative voting in election of directors, and to conduct business in other States and foreign countries; to issue and sell bonds for less than par (secs. 1-5, 12-14, 19, 24, 40; Laws of 1903, chaps. 93, 154, 660; Laws of 1905, chap. 114).

*Heggie v. Association*, 107 N. C. 581; 12 S. E. 275; *Meares v. Improvement Co.*, 126 N. C. 662; 36 S. E. 130.

5. **Procuring the Charter.** — Incorporators must subscribe and acknowledge the certificate of incorporation. The certificate must then be filed and recorded in the office of the Secretary of State, the organization tax being then paid. A certified copy of the certificate and probate must be forthwith recorded in the office of the clerk of the Superior Court of the county where the principal office of the corporation is to be established (sec. 9; see also Laws of 1903, chap. 343).

*Ashville Div. v. Oston*, 92 N. C. 578.

6. **Corporate Indebtedness.**—There is no statutory limitation upon the amount of corporate indebtedness. The law expressly permits bonds of corporations to be sold for less than par (Laws of 1903, chap. 154).

7. **Organization Tax.**—Twenty cents for each one thousand dollars of the amount of capital stock authorized, but in no case less than \$25 (sec. 96; see also Laws of 1903, chap. 93).

8. **Filing and Recording Fees.**—For filing and recording certificate of incorporation in the office of the Secretary of State, \$1 for the first three copy sheets, and 10 cents per copy sheet thereafter. The same charge is made for certified copy of certificate of incorporation; for filing list of officers and directors, \$1; for filing and recording certificate of incorporation in the office of the clerk of the superior court of the county where the principal office of the corporation is established, \$2.

9. **Commencing Business.**—Corporations may commence business as soon as the certificate of incorporation is filed as required by law (sec. 10). Within thirty days after the election of the first board of directors there must be filed in the office of the Secretary of State a statement authenticated by the signatures of the president and secretary containing the names of all the directors and officers, with the date of the election or appointment, term of office, residence and post-office address of each, the character of its business and location, giving the street and number, if any, of its principal office in the State, and the name of the agent in charge of said office upon whom process may be served (sec. 48). Business must be commenced within two years from the time certificate is filed (sec. 106).

10. **Organization Meeting.**—The organization meeting must be held within the State. The statute provides for calling the same, and also gives the incorporators the direction of the affairs and organization of the corporation until directors are elected (secs. 11, 18).

11. **Meetings of Stockholders and Directors.**—Stockholders' meetings must be held within the State. Directors' meetings may be held without the State, if the by-laws so provide (sec. 49).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.*—There must be a board of not less than three directors. At least one of them must be a resident of the State. They must all be *bona fide* stockholders. They may be divided into classes, provided no class is elected for a shorter period than one year or for a longer period than five years (secs. 14, 44).

*b. Liabilities.*—Directors are liable for the illegal declaration of dividends, for neglecting or refusing to make certificate as required by law upon the payment in full of each instalment of the capital stock, and filing the same within ten days after such payment in the office of the Secretary of State. They are also liable for not publishing notice of decrease of capital and for illegal voting for reduction of capital (secs. 26, 27, 33, 53, 56, 65, 107).

*Solomon v. Bates*, 118 N. C. 321; 24 S. E. 746.

13. **Stockholders' Liabilities.**—Stockholders are liable for their unpaid stock subscriptions. They are also liable for fraud committed by them, to creditors and others injured thereby (sec. 22).

*Harmon v. Hunt*, 116 N. C. 678; 21 S. E. 559; *Cooper v. Company*, 127 N. C. 219; 37 S. E. 216; *Cotton Mills v. Cotton Mills*, 116 N. C. 647; 21 S. E. 431.

14. **Stock Certificates.**—Every stockholder is entitled to a certificate signed by the president and treasurer or secretary, specifying the number of shares held by him in the corporation (sec. 20).

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15. **Preferred Stock.** — Preferred stock may be issued in such amounts and at such times as may be deemed desirable. It may be created with such preferences and voting powers, restrictions or qualifications thereof as shall be stated and expressed in the certificate thereof. Dividends may be made cumulative if desired, and in case of insolvency holders thereof have a preference over the holders of common stock (sec. 19; Laws of 1903, chap. 660).

16. **Payment of Capital Stock.** — Stock may be issued in exchange for money, labor done, personal property, real estate, or leases thereof. In the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate, or leases thereof shall be conclusive (sec. 19). Corporations may purchase mines and manufactories and issue stock in payment therefor to the amount of the value thereof, and the stock so issued shall be full-paid stock and not liable to any further call. In the absence of fraud the judgment of the directors as to the value of the property so taken shall be conclusive. Upon the payment in full of each instalment of capital stock a certificate setting forth the particulars thereof verified by the president and secretary or treasurer must within ten days after such payment be filed in the office of the Secretary of State (secs. 19, 26, 53-55).

17. **Books.** — Must keep at its principal office in the State the transfer books and the stock books of the corporation (sec. 38). These are open to the inspection of all stockholders.

18. **Office and Agent.** — Every corporation is required to have an office within the State where its name must be displayed in conspicuous letters. Must have an agent in charge of its principal office within the State residing therein (secs. 49, 50; see also Laws of 1903, chap. 806).

*Simmons v. Steamboat Co.*, 113 N. C. 147; 18 S. E. 117.

19. **Reports.** — Annual reports must be filed with the Secretary of State in each year (sec. 48). Also on or before July 1st of each year an annual report must be filed with the State Auditor (Laws of 1905, chap. 590, sec. 34).

20. **Anti-Trust Statute.** — There is a somewhat drastic anti-trust statute in force in North Carolina (Laws of 1899, chap. 666).

21. **Statutory Grounds for Forfeiture of Charter.** — Charter may be forfeited for failure to bring the books of the corporation into the State after an order to that effect made by the superior court upon proper cause shown. Charter may also be dissolved by the State for abuse, misuser, or non-user of its corporate powers and privileges and for violation of the anti-trust statute. Also for assuming or exercising any franchise or transacting any business not allowed by its charter (sec. 49; Laws of 1899, chap. 66, sec. 5; Laws of 1901, chap. 2, sec. 107). Charter may also be forfeited if the incorporators for two years should neglect or fail to organize the company, or when organized if they for two years at any time shall cease to act (sec. 106); also for failing to pay annual franchise tax for three consecutive years (Laws of 1905, chap. 588, sec. 83).

*Cotton Mills v. Burns*, 114 N. C. 353; 19 S. E. 238.

22. **Amendments.** — The incorporators before the payment of any part of the capital stock may file with the Secretary of State an amended certificate of incorporation duly signed by all the incorporators, amending the original certificate of incorporation in whole or in part. The amended certificate when recorded in the local county office takes the place of the original certificate of incorporation (sec. 28). Every corporation after the payment of its capital

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stock may change its name, increase or decrease its capital stock, change the par value of its shares, and make any other amendment desired in manner following, to wit :

The board of directors shall pass a resolution declaring that such amendment is advisable and calling a meeting of the stockholders to take action thereon. The meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days' notice given personally or by mail. If two-thirds in interest of each class of the stockholders having voting powers shall vote in favor of the amendment, a certificate thereof shall be signed and acknowledged by the president and secretary under the corporate seal, and such certificate together with the written assent in person or by proxy of two-thirds in interest of each class of such stockholders shall be filed in the office of the Secretary of State, and upon such filing they shall be recorded in the county in which the original certificate of incorporation is recorded. Thereupon the certificate of incorporation shall be deemed to be amended accordingly (secs. 29, 30).

The board of directors may change the location of the principal office of such corporation within the State to any other place therein by resolution adopted at a regular or special meeting of such board by the vote of at least two-thirds of the members of such board. No certificate, however, is required to be filed on account of the removal of any office from one point to another in the same city or town of the State. Upon the adoption of a resolution as aforesaid a copy thereof must be filed in the office of the Secretary of State, signed by the president and secretary of such corporation under the corporate seal (sec. 31).

Special provision is made in the case of decrease of capital stock as follows: The decrease may be effected by retiring or reducing one class of stock or by drawing the necessary shares by lot for retirement, or by the surrender by every shareholder of his certificates and the issuance to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation, or by reducing the par value of shares one-fourth. A certificate showing the decrease must be published for three weeks successively at least once in each week in a newspaper published in the county in which the principal office of the corporation is located, the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for all debts of the corporation contracted before the filing of said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced (sec. 32).

**23. Extension of Corporate Existence.** — Corporation may extend its corporate existence for any period desired (secs. 29, 37).

**24. Dissolution.** — A corporation may dissolve by mutual consent upon the vote of two-thirds in interest of the stockholders (secs. 34, 59-65 inclusive). The charter may be surrendered by the incorporators before the payment of any part of the capital and before beginning business by complying with the statute in such case made and provided (sec. 35).

**25. Annual License Fee.** — Where the corporation has a capital stock paid in or subscribed of \$25,000, the annual tax is \$5; up to \$50,000, \$10; up to \$100,000, \$25; up to \$250,000, \$50; up to \$500,000, \$100; up to \$1,000,000, \$200; over \$1,000,000, \$500 (Act of March 15, 1901, chap. 9, sec. 91; Laws of 1903, chap. 247, sec. 81; Laws of 1905, chap. 588, sec. 83.)



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**26. Foreign Corporations.** — Foreign corporations must file with the Secretary of State a copy of their charter attested by the president and secretary under the corporate seal, and accompanied by a statement attested in like manner setting forth the amount of capital stock authorized, amount issued, location of principal office in the State, and name of agent in charge thereof, character of the business to be transacted, and names and post-office addresses of officers and directors. Such corporations must also pay a tax of 10 cents per thousand dollars on authorized capital stock, provided, however, that the same shall never be less than \$10 nor more than \$100 (Laws of 1903, chap. 766). Foreign corporations are also subject to the same annual license tax imposed upon domestic corporations (Laws of 1905, chap. 588, sec. 83). Annual reports must also be filed.

*Debnam v. Company*, 126 N. C. 831; 36 S. E. 269; *Howard v. Association*, 125 N. C. 49; 34 S. E. 199; *Commissioners v. Company*, 128 N. C. 558; 39 S. E. 18; *Shields v. Life Ins. Co.*, 119 N. C. 380; 25 S. E. 951; *J. A. H. Co. v. Company* (N. C.), 50 S. E. 650.

## NORTH DAKOTA.

(The references cited below are to the Revised Code of 1899, unless otherwise stated.)

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of North Dakota is to be found in the Revised Code of 1899, secs. 2850–3265 b, as amended by the Session Laws of 1901. Under this act corporations may be formed for any purpose for which individuals may lawfully associate themselves, except that special acts are provided for railway, wagon road, insurance, bridge, agricultural, fair, and eleemosynary corporations (sec. 2858). There are some special provisions applicable to mining and manufacturing companies (secs. 3154, 3161).

**2. Incorporators.** — Not less than three, one-third of whom must be residents of the State (sec. 2858).

**3. Contents of the Articles of Incorporation.** — The articles must set forth:

*a. Name.* — There is no statute expressly forbidding the use of a name already in use by another domestic corporation, but the power is assumed by the Secretary of State to refuse articles attempting to make use of such name.

*b. Purposes.* — Purpose for which it is formed. The Secretary of State permits the insertion of any number of purposes in the articles not covered by special acts (secs. 2861, 3155).

*c. Domiciliary Office.* — Place where its principal business is to be transacted.

*d. Duration.* — Term for which it is to exist, not exceeding twenty years.

*e. Directors.* — Number of directors and names and residences of those who are to serve until their successors are elected and qualified.

*f. Capital Stock.* — Amount of capital stock, number of shares into which it is divided. Both may be any amount desired (sec. 2861).

**4. Statutory Powers.** — In addition to a statutory enumeration of common law powers, the following additional powers are granted: To authorize voting by proxy; to forfeit stock for non-payment of assessments; to own its own stock; to provide penalties for violation of by-laws not to exceed \$100; to permit cumulative voting, and to remove directors (secs. 2875, 2880, 2882, 2884, 2888, 2894, 2895, 2917–2935).

*Tourtlot v. Whithead*, 9 N. D. 407; 84 N. W. 8.

5. **Procuring the Charter.** — The charter must be subscribed and acknowledged by the incorporators. The articles must then be filed with the Secretary of State (secs. 2864, 2867). There must be filed with the Secretary of State a duplicate receipt of the State Treasurer showing payment of organization tax. When all these formalities have been complied with, the Secretary of State issues a certificate of incorporation. Collateral inquiry into the legality of corporate existence is forbidden (secs. 2852, 2867).

6. **Corporate Indebtedness.** — Corporate indebtedness must not exceed the amount of subscribed capital stock. Express authority is given to issue bonds (secs. 2891, 2905).

7. **Organization Tax.** — For capitalization up to \$50,000, fee of \$50 to be paid to the State Treasurer, and \$5 for every additional \$10,000 or fractional part thereof. This schedule of fees does not apply to corporations for the manufacture of dairy products, agricultural fair corporations, building and loan associations, irrigation, water users associations, county mutual insurance companies, or to corporations whose capitalization does not exceed \$5,000 formed for the purpose of the purchase of male animals for the improvement of stock (Laws of 1905, chap. 67).

8. **Filing and Recording Fees.** — For filing and recording articles of incorporation in the office of the Secretary of State, \$3; for issuing a certificate of incorporation, \$5; for issuing certified copy of articles of incorporation, 25 cents per folio of one hundred words and \$1 for certificate. The charge for filing and recording amendments to articles of incorporation is 25 cents per folio of one hundred words.

9. **Commencing Business.** — Business may be commenced as soon as the articles are executed and filed as required by law (sec. 2868). By-laws must be adopted within one month after filing articles (sec. 2883). The corporation must organize and commence business within one year after filing articles (sec. 2913).

10. **Organization Meeting.** — In the absence of a provision in the articles providing otherwise the organization meeting must be held within the State (sec. 2898). By making provision in the articles therefor all meetings may be held without the State, at some place within the United States (sec. 3160).

11. **Meetings of Stockholders and Directors.** — In the absence of a provision in the articles providing otherwise meetings of stockholders and directors for the election of officers of the corporation must be held at its principal place of business within the State. Other meetings of the board of directors may be held at such place within or without the State as the by-laws may provide (secs. 2898, 2899, 2903). By making provision in the articles therefor, all meetings may be held without the State at some place within the United States (sec. 3160).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three and not more than eleven directors, all of whom must be stockholders, and one a resident of the State (sec. 2889).

*b. Liabilities.* — Directors are liable to creditors to the extent of the amount of debts in excess of the subscribed capital stock. They are also liable for the declaration of illegal dividends. Express provision is made in the act for their removal from office (secs. 2891, 2892, 2894). Directors are also liable for illegal issue of bonds (sec. 2905). Directors in mining and manufacturing companies are liable for violations of law which result in insolvency of the company (sec. 3161). There is also a liability for issuing stock at less than par value paid thereon (sec. 2876).

13. **Stockholders' Liabilities.** — Stockholders are liable to the extent of their unpaid stock subscriptions. Stockholders of manufacturing and mining corporations are jointly and severally liable for all debts to mechanics, workmen, and laborers employed by such corporation (secs. 2902, 3157).

14. **Stock Certificates.** — Each stockholder is entitled to a certificate showing the number of shares owned by him, signed by the president and secretary (secs. 2876, 2904).

15. **Preferred Stock.** — The act does not expressly authorize the issuance of preferred stock.

16. **Payment of Capital Stock.** — Stock may be issued for money, labor done, or property estimated at its true money value actually received by it. All officers who consent to the issuance of stock for labor or property in excess of its actual cash value, or who, having knowledge thereof, do not formally dissent therefrom, are jointly and severally liable to creditors of such corporation for the difference between the actual value of such labor or property at the time the stock was issued and the par value of the stock issued therefor. Corporations are expressly forbidden to accept notes in payment of stock subscriptions (secs. 2877, 2878). Corporations are expressly forbidden to issue stock with the understanding that the full par value shall not be paid (sec. 2876). The act provides that the directors named in the certificate of incorporation shall proceed to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the capital stock still unsubscribed, and to secure subscription to the full amount of the fixed capital (sec. 2874).

17. **Books.** — The corporation records must be kept at the principal office within the State. Also stock register, book of by-laws, and books of account (secs. 2885, 2907, 3156). They are open to the inspection of stockholders and creditors.

18. **Office and Agent.** — All corporations must maintain an office within the State, and an agent to receive process (secs. 2861, 2885, 2907, 3160, 3265 a).

19. **Reports.** — Must file annually with the Secretary of State an anti-trust affidavit. The filing fee is \$2.50 (Laws of 1905, chap. 188).

20. **Anti-Trust Statute.** — There is a more or less effective anti-trust statute in force in North Dakota (secs. 7480-7484; Laws of 1905, chap. 188).

21. **Statutory Grounds for Forfeiture of Charter.** — Charter may be forfeited for entering illegal trusts and combinations. It may also be forfeited for misuser or non-user by proper action taken by the State. Also for failing for one year to transact its usual business within the State, or failing for one year to keep and maintain a public office at its principal place of business within the State for the transaction of its usual and regular business and at the same time, by instrument duly filed in the Secretary of State's office, appointed the last-named officer its resident agent, upon whom process may be served (secs. 3265 a, 7480-7484). Also for failure to organize and commence business within one year; or for violation of anti-trust act (sec. 2913; Laws of 1905, chap. 188).

22. **Amendments.** — To increase or diminish the capital stock corporate action must be taken at a meeting of the stockholders called for that purpose by the directors as follows: Notice of the time and place of the meeting, stating its object and the amount to which it is proposed to increase or diminish its capital stock must be personally served on each stockholder resident in the State sixty days prior to the time of such meeting at his place of residence, if known; and the notice must be given to stockholders whose

places of residence are unknown, or who are not residents in the State, by the publication of such notice in a newspaper published in the county where the principal office of the corporation is situated not less than once a week for sixty days prior to such meeting. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct. At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution before it can be effected. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, and the vote by which the object was accomplished (sec. 2905).

Articles may be amended in any respect desired at a meeting called for that purpose by the directors as follows: Notice of the time and place of the meeting, stating its object must be served in the manner prescribed in the case of increase or decrease of capital stock. At least two-thirds of the entire capital stock must be represented by the vote in favor of the amendment or change in the articles of incorporation. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the articles to be amended or changed, the amount of stock or the number of members represented at the meeting and the vote by which the object was accomplished. The certificate must be filed in the office of the Secretary of State, there to be recorded in the book of corporations, and thereupon the articles shall be so amended. The written assent of the holders of three-fourths of the capital stock or members shall be as effectual to authorize the change or amendment of the articles of incorporation as if a meeting of the stockholders as prescribed by this section was called and held; upon such written assent the directors may proceed to make the certificate to the Secretary of State as herein provided (secs. 2903, 2910, 2911; as to change of corporate domicile, see Laws of 1905, chap. 66).

**23. Extension of Corporate Existence.** — Corporations may be extended for an additional period of twenty years if desired (sec. 3259).

**24. Dissolution.** — Dissolution may be had through the district court by the State or by a private person in the name of the State (secs. 2912, 2913, 2914; Laws of 1903, chap. 59).

**25. Annual License Fee.** — There is no annual license fee.

**26. Foreign Corporations.** — Foreign corporations must file articles of incorporation and execute a power of attorney to the Secretary of State to receive process before commencing business (secs. 3261, 3263; as amended by Laws of 1905, chap. 68). They must also maintain an office within the State (Cons., Art. VII. sec. 136). The Secretary of State collects a fee of \$20 for filing and recording certified copy of articles of incorporation of foreign companies, and \$5 for the filing and recording of appointment of Secretary of State as attorney to receive service of process. Foreign corporations must also file annually an anti-trust affidavit. The filing fee is \$2.50 (Laws of 1905, chap. 188, sec. 5).

G. R. L. Co. v. Company, 6 N. D. 276; 69 N. W. 691; Nat. Cash Register Co. v. Wilson, 9 N. D. 112; 81 N. W. 285; Washburn Mills Co. v. Bartlett, 3 N. D. 138; 54 N. W. 544.

## OHIO.

(The references cited below are to Bates's Annotated Statutes, 1904, unless otherwise stated.)

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Ohio is to be found in the Revised Statutes of Ohio, 1904, secs. 3232, 3269–3274 inclusive; also secs. 3855–3867. Corporations may be organized for any purpose for which individuals may lawfully associate themselves, excepting for carrying on professional business (sec. 3235).

**2. Incorporators.** — Not less than five, a majority of whom must be citizens of Ohio (sec. 3236).

*Hessler v. Company*, 61 Ohio St. 621; 56 N. E. 469.

**3. Contents of Articles of Incorporation.** — The articles must set forth:

*a. Name.* — The name must begin with the word "The" and end with the word "Company." Similarity of names as between domestic corporations is forbidden (sec. 3236, sub. 1; sec. 3238).

*b. Domicile.* — Place where it is to be located, and where its principal business is to be located (sec. 3236, sub. 2).

*c. Purpose.* — The purpose for which it is formed. This provision is construed by the Secretary of State to forbid the incorporation of companies for more than one purpose (sec. 3236, sub. 3).

*d. Capital Stock.* — Amount of its capital stock. Number of shares. Capitalization and par value may be any amount (sec. 3236, sub. 4). If a corporation desires to do away with cumulative voting provided for by the act, a provision must be inserted in the articles expressly providing that each share of stock shall be entitled to one vote and no more (sec. 3245 a). Provision may be inserted in subdivision d, providing for the issuance of preferred stock, and that the holders thereof shall be entitled to dividends of eight per cent per annum in each year in preference to all other stockholders (sec. 3235 a). Duration may be perpetual except for corporations engaged in buying and selling real estate, which are limited to twenty-five years (sec. 3235). Corporations may also provide in their articles that each stockholder, irrespective of the amount of stock he may own, shall be entitled to one vote and no more at any election of directors, etc. (secs. 3245 a 1, 3245 b 1).

**4. Statutory Powers.** — In addition to the statutory enumeration of common law powers, the following additional powers are granted: To issue preferred stock, to authorize voting by proxy in the election of directors, also for cumulative voting in the election of directors, if desired; for forfeiture of stock for non-payment of assessments, and for consolidating with other corporations. May hold stock in other non-competing corporations (secs. 3239, 3235, 3244, 3245, 3253, 3256). Manufacturing corporations may subscribe for stock in railroad and transportation companies (sec. 3863). Mining and manufacturing corporations may hold and convey real estate, and transact business outside of the State (sec. 3862). Corporations may stipulate that their obligations may be converted into stock (sec. 3257).

*Greene v. Company*, 62 Ohio St. 67; 56 N. E. 642; *Lander v. Burke*, 65 Ohio St. 532; 63 N. E. 69.

**5. Procuring the Charter.** — Articles must be subscribed and acknowledged by each of the incorporators, and the official character of the officer taking the

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acknowledgment must be certified to by the clerk of the common pleas of the county wherein taken. The articles must then be filed in the office of the Secretary of State (secs. 3236, 3238).

*State ex rel. v. Ins. Co.*, 49 Ohio St. 440; 31 N. E. 658; *Society Perun v. Cleveland*, 43 Ohio St. 481; 3 N. E. 357.

6. **Corporate Indebtedness.**—Corporate indebtedness must not exceed the amount of its authorized capital stock. Provision may be made in the case of mortgage indebtedness where the same does not exceed one-half of the capital stock actually paid in, that the holders of the debt secured by such mortgage shall have the right to convert the same into either common or preferred stock (secs. 3256, 3257, 3265).

7. **Organization Tax.**—Corporations having authorized capital stock of \$10,000 or under, \$10; corporations with more than \$10,000, one-tenth of one per cent on such capital stock (secs. 148, 148 a).

8. **Filing and Recording Fees.**—The payment of the organization tax includes the filing and recording fees in the Secretary of State's office. The incorporators are also entitled free of charge to one certified copy of the articles of incorporation. For additional copies the charge is 10 cents per hundred words and 50 cents for attaching certificate. The cost of filing certificate as to stock subscriptions is \$2. For filing and recording amendments to articles of incorporation the charge is \$5.

9. **Commencing Business.**—The incorporators or a majority of them must order books to be opened for subscriptions to the capital stock at such times and places as they may deem expedient. The act requires thirty days' notice thereof, unless the incorporators waive the same in writing, such waiver to be entered in the corporate records (sec. 3242). As soon as ten per cent of the capital stock is subscribed a majority of the incorporators must so certify in writing to the Secretary of State, and thereupon call a meeting of the stockholders for the purpose of choosing not less than five nor more than fifteen directors. Publication of this notice may be waived by all of the stockholders in writing, who must be present either in person or by proxy. As soon as these directors are elected the corporation may begin business. Business must be commenced within five years after date of incorporation (secs. 3242 to 3244 inclusive, 6780; Laws of 1904, p. 170).

*State ex rel. v. Ins. Co.*, 49 Ohio St. 440; 31 N. E. 658.

10. **Organization Meeting.**—The organization meeting must be held within the State (sec. 3252). The law provides that the incorporators shall give notice to the stockholders, as provided in the revised statutes (sec. 3242), to meet at such time and place as may be designated, for the purpose of choosing not less than five nor more than fifteen directors, who shall continue in office until the time chosen for the annual election. The law, however, provides that in case all the subscribers to the capital stock are present in person or by proxy, the notice required by statute may be waived in writing (Laws of 1904, p. 170). At the first election incorporators are authorized to act as inspectors of election (sec. 3245).

11. **Meetings of Stockholders and Directors.**—Stockholders' meetings must be held within the State. Directors' meetings may be held without the State if the by-laws so provide (secs. 3238 a, 3252). As to right to cumulate votes, see *State ex rel. Stockley*, 45 Ohio St. 304; *State ex rel. Henderson v. Hogan*, 1 W. L. B. 227; *State ex rel. Dent v. Halloway*, 1 C. C. 157.

12. **Director's Qualifications and Liabilities.** a. *Qualifications.*—There

must be not less than five nor more than fifteen directors. All must be stockholders and a majority citizens of Ohio. The statute expressly authorizes the directors to adopt a code of by-laws for their own management. The directors must each subscribe to an oath of office (secs. 3244, 3247, 3248, 3250).

*b. Liabilities.* — Directors are liable for the illegal declaration of dividends (secs. 3269, 1-4). They are also personally liable for contracting debts before ten per cent of the capital stock has been subscribed.

*Trust Co. v. Floyd*, 47 Ohio St. 325; 26 N. E. 110.

**13. Stockholders' Liabilities.** — Since the Constitutional Amendment adopted in 1903, stockholders in Ohio corporations are liable only to the extent of their unpaid stock subscriptions. (See former statute, sec. 3253; see also Laws of 1904, p. 396.) The law requires that a majority of the subscribers to the articles of incorporation shall certify to the Secretary of State that ten per cent of the capital stock is subscribed. The law further provides that such stockholders shall be liable to any person affected thereby to the amount of any deficiency in the actual payment of such ten per cent at the time of so certifying (Laws of 1904, p. 170).

*Wick Nat. Bank v. Union Nat. Bank*, 62 Ohio St. 446; 57 N. E. 320; *Kulp v. Fleming*, 65 Ohio St. 321; 62 N. E. 334; *Boice v. Hodge*, 51 Ohio St. 236; 37 N. E. 265.

**14. Stock Certificates.** — Each stockholder is entitled to have a stock certificate issued to him, signed by the president and secretary (sec. 3254).

**15. Preferred Stock.** — Preferred stock is expressly authorized by providing therefor in the articles of incorporation or by subsequent action of the stockholders. Holders of preferred stock are entitled to dividends not to exceed eight per cent per annum out of the surplus profits in preference to all other stockholders. At no time can the preferred stock exceed two-thirds of the actual stock paid in in cash or property (secs. 3235 a, 3263).

**16. Payment of Capital Stock.** — Stock may be issued only for money or property. (See sec. 3235 a.)

**17. Books.** — Must keep a stock book open to inspection of stockholders in which is recorded subscriptions and transfers of stock. Minutes of the stockholders' and directors' meetings must be kept (sec. 3254). Manufacturing companies must keep their books of account at their principal office. This is open to inspection of assessors.

*C. V. Co. v. Hoffmeister*, 62 Ohio St. 189; 56 N. E. 1033.

**18. Office and Agent.** — Every corporation must maintain an office and agent to receive service of process, and keep accounts of financial condition, and also transfer books (secs. 3236, 3855, 5651).

*Mercantile Tr. Co. v. Elsa Iron Works*, 4 Ohio Cir. Ct. 579.

**19. Reports.** — During May a report must be filed with the Secretary of State, containing among other things names and addresses of the officers and directors; amount of capital stock subscribed, issued, outstanding, and paid in; kind of business engaged in. Annual reports must also be made to stockholders (secs. 3268, 3269; Laws of 1902, p. 124).

**20. Anti-Trust Statute.** — Ohio has a somewhat drastic anti-trust statute on its statute-books (secs. 4427, 1-12).

**21. Statutory Grounds for Forfeiture of Charter.** — Charters may be forfeited by the State for misuser or non-user for five years, or for violation

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of the anti-trust act, or for failure to pay annual license tax (secs. 4427-4432, 6760, 6761, 6780; Laws of 1904, pp. 381-383).

*State v. Company*, 62 Ohio St. 350; 57 N. E. 62.

**22. Amendments.** — Before the capital stock can be increased, all of the original authorized stock must be fully subscribed for, and ten per cent paid in either in cash or in property. The amendment providing for the increase of stock is rendered effective by a majority vote cast at a stockholders' meeting called by a majority of the directors. At least thirty days' notice of the time, place, and object of such meeting must be given by publication and by letter addressed to each stockholder whose place of residence is known. If all of the stockholders are present in person or by proxy at said meeting, the foregoing prescribed notice may be waived. The stockholders must also agree in writing to said increase, naming the amount thereof to which they agree. A certificate of the action taken at said meeting must be filed with the Secretary of State (sec. 3262; see also *Peters v. Company*, 56 Ohio, 200). It would appear to be necessary, also, that a copy of such amendment to the original articles should be filed with the Secretary of State, together with a certificate thereto attached, signed by the president and secretary of the corporation and sealed with the corporate seal, stating the nature and date of the adoption of the amendment, and certifying that a copy thereof, to which the certificate is attached, is a true copy of the amendment as adopted (sec. 3238 A).

To increase the number of directors requires a majority vote of all the stockholders taken at a meeting thereof, called for that purpose (sec. 3267).

Any corporation may at any meeting of its stockholders, of which and of the business to come before said meeting thirty days' notice has been given by a majority of the directors in a newspaper of general circulation published in the county where the principal place of business of said corporation is located, by a vote of three-fifths of its subscribed capital stock, amend its articles so as to change its corporate name, or its domiciliary office, or so as to modify, enlarge, or diminish the purposes for which it is formed, provided the original purposes are not substantially changed, or so as to add anything omitted therefrom, or which might lawfully have been provided for in the original articles. When adopted a copy of such amendment with a certificate thereto attached, signed by the president and secretary of the corporation under the corporate seal, stating the fact and date of the adoption of the amendment, and that such copy, is a true copy of the original, must be recorded in the office of the Secretary of State. Before the amendment can take effect, the secretary of the corporation must give notice of such amendment for three successive weeks in some newspaper of general circulation in the county where the principal place of business is located. Publication of all of the foregoing notices may be waived in writing by all of the stockholders signing such waiver (sec. 3238 a).

*State ex rel. Taylor*, 55 Ohio St. 67.

**23. Extension of Corporate Existence.** — There is no provision for extension of corporate existence.

**24. Dissolution.** — A majority of the managing board or stockholders, representing one-third of the capital stock, may apply to the court of common pleas for dissolution (R. S., secs. 5651-5688 inclusive; O. L., 1902, p. 274). Charters may be surrendered if desired before any instalment of capital stock has been paid in or debts incurred, by complying with the statute in such case made and provided (sec. 5674; Laws of 1904, p. 383).



**25. Annual License Fee.** — One-tenth of one per cent upon subscribed or issued and outstanding stock (secs. 2780-24).

**26. Foreign Corporations.** — Before commencing to transact business within the State every foreign corporation must, under oath of its president, secretary, treasurer, superintendent, or managing officer within the State, make and file with the Secretary of State a statement containing the following facts: (1) Number of shares of authorized capital stock and par value thereof; (2) Name and location of the office and officers of the company in Ohio, and the name and address of the officers or agents of the company in charge of its business in Ohio; (3) The value of the property owned and used by the company in Ohio, where situate, and the value of the property owned and used outside of Ohio; (4) The proportion of the capital stock of the company which is represented by property owned and used, and by business transacted in Ohio. Thereupon the Secretary of State shall determine the proportion of the capital stock represented by property and business in Ohio, and shall impose and collect a tax of one-tenth of one per cent upon the proportion of the authorized capital stock of the corporation, represented by property owned and used, and business transacted in Ohio. This tax is payable annually thereafter. Foreign corporations transacting business without a permit are subject to fine, and are cut off from all recourse to the courts. The law, however, provides that a foreign corporation obtaining a permit shall not be subject to attachment as a foreign corporation (Laws of 1904, p. 383).

*W. U. Telegraph Co. v. Mayer*, 28 Ohio St. 521; *Clarke v. C. R. R. & B. Co. et al.*, 50 Fed. Rep. 338; *Toledo, etc. Co. v. Glum, etc. Co.*, 55 Ohio St. 217; 45 N. E. 197; *Gen. Electric Co. v. Lima Electric Co.*, 4 Ohio Nisi Prius Rep. 167; *State v. Sherman*, 22 Ohio St. 411; *Lander v. Burke*, 65 Ohio St. 532; 63 N. E. 69.

## OKLAHOMA.

(The references cited below are to Wilson's Annotated Statutes of 1903, chap. 17, unless otherwise stated.)

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act is to be found in chap. 17, arts. 1 to 12 of the Statutes of 1893. Parties may incorporate under the General Act for the following purposes: Mining, manufacturing, and other industrial pursuits, the construction of railroads, wagon roads, street railways, electric light, power, and gas plants, water works, irrigating ditches, eleemosynary purposes, for conducting the business of insurance, banks of discount and deposit (but not of issue), building and investment companies, loan, trust, and guarantee corporations, merchandizing, wholesale or retail or both; for the purpose of locating, laying out, and improving town sites, and buying and selling real estate therefor, including the sale and conveyance of the same in lots, subdivisions, or otherwise. For the purpose of constructing telegraph and telephone lines and systems, and the organization and maintenance of commercial clubs and business exchanges, and for the purpose of constructing sewers and other municipal improvements (sec. 12 as amended by Laws of 1903, chap. 9).

**2. Incorporators.** — Not less than three, one-third of whom must be residents of the Territory (sec. 12 as amended by Laws of 1903, chap. 9).

**3. Contents of the Articles of Incorporation.** — The articles must set forth:

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*a. Name.* — The Secretary of the Territory will not permit two domestic corporations of the same name.

*b. Purposes.* — Purposes for which it is formed. State officials allow articles to pass allowing incorporation for different lines of industrial business, so long as they do not conflict with any special statute in regard to the organization of corporations.

*c. Domicile.* — The place where the principal business is to be transacted.

*d. Duration.* — The term of existence of corporations formed for manufacturing and other industrial pursuits is limited to twenty years.

*e. Directors.* — Number of directors and names and residences of those who are to serve until formal election of the first board of directors. The qualifications of the directors must also be set forth.

*f. Capital Stock.* — The amount and number of shares into which it is divided. Both the capital and the par value of shares may be any amount (sec. 14).

**4. Statutory Powers.** — In addition to the enumeration of common law powers the statute confers the following additional powers: To purchase its own shares; to vote by proxy; to have a business office without the Territory at any place within the United States, and to hold any meeting of the stockholders or directors of the corporation at said office; to forfeit stock for non-payment of assessments; to remove directors; to provide penalties to the amount of \$100 for violation of by-laws (secs. 27, 30, 32, 34, 43, 44, 56-75, 161).

*Topeka Paper Co. v. Company*, 7 Okla. 220; 54 Pac. 455.

**5. Procuring the Charter.** — The articles must be subscribed by each of the incorporators and acknowledged before some officer authorized to take acknowledgments of conveyances of real property. The articles must then be filed with the Secretary of the Territory (secs. 17, 18). Collateral inquiry into the legality of corporate existence is forbidden (sec. 4).

**6. Corporate Indebtedness.** — The corporate indebtedness is limited to the amount of subscribed capital stock (sec. 41).

*Rodgers v. Bonnett*, 2 Okla. 553; 37 Pac. 1078.

**7. Organization Tax.** — There is no organization tax imposed upon corporations.

**8. Filing and Recording Fees.** — To the Secretary of the Territory for filing articles, \$5; for issuing certificate of incorporation, \$3; for affixing certificate to copy of articles, \$1; for making copy of articles, 10 cents per folio.

**9. Commencing Business.** — The company must be organized and business must be commenced within one year from the date of the issuance of the certificate of incorporation. The company must be organized — to the extent of the adoption of by-laws at least — within thirty days after the filing of articles of incorporation (secs. 33, 52).

**10. Organization Meeting.** — The organization meeting may be held without the State if the charter so provides. By-laws must be adopted within thirty days after filing articles of incorporation. The corporation must be organized and commence business within one year from date of incorporation (secs. 33, 52, 161; see also sec. 47).

**11. Meetings of Stockholders and Directors.** — If the charter so provides, both the stockholders' and directors' meetings may be held without the State. Otherwise the stockholders' meetings must be held within the State, and the directors' meetings wherever the by-laws provide (secs. 45, 161; see also sec. 47).

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**12. Directors' Qualifications and Liabilities.** *a. Qualifications.*—There must be at least three directors and not more than eleven, all of whom must be stockholders. One-third of the officers must be residents of the Territory. At the first meeting at which by-laws are adopted, or at such subsequent meetings as may then be designated, directors may be elected to hold their office for one year or until their successors are elected and qualify (secs. 9, 37, 39).

*b. Liabilities.*—Directors are liable for illegally increasing or reducing the stock of the corporation, for declaring illegal dividends; also for making false reports, for creating debts beyond the amount of subscribed capital stock, and for making loans to stockholders (secs. 41, 42, 156).

**13. Stockholders' Liabilities.**—Stockholders are liable for debts of the company to the extent of their unpaid stock subscriptions. Also for debts due mechanics, workmen, and laborers employed by the corporation (secs. 46, 158).

Chicago Bldg. & Mfg. Co. v. Lyon, 10 Okla. 704; 64 Pac. 6.

**14. Stock Certificates.**—Stock certificates must be signed by the president and secretary (secs. 48, 288).

**15. Preferred Stock.**—The act makes no special provision for the issuance of preferred stock.

**16. Payment of Capital Stock.**—Corporations can issue stock for money, labor done, or money or property actually received. The act expressly provides that all stock certificates issued in excess of the capital stock shall be void.

**17. Books.**—Stock transfer book and a journal of the meetings of directors and stockholders must be kept open for inspection of stockholders, but the place where such book is to be kept is not specified by statute (secs. 35, 50, 157).

**18. Office.**—The act requires every corporation to have its main office for the transaction of its business within the Territory (secs. 45, 161).

**19. Reports.**—Corporations for mining, manufacturing, and other industrial pursuits must annually, within twenty days from the first day of January, make a report which must be published in some newspaper published at the place where the principal business of the corporation is carried on, stating the capital stock, and the amount thereof actually paid in, the amount and rating of its indebtedness, and the amount due the corporation, the number and amount of dividends and when paid, and the net amount of profits. This report must be signed by the president and a majority of the directors, and verified by the president or secretary, and filed in the office of the register of deeds of the county where the corporate business is carried on (sec. 159).

**20. Anti-Trust Statute.**—Certain classes of trusts and combinations are prohibited. (See Stat., sec. 6140.)

**21. Statutory Ground for Forfeiture of Charter.**—The charter may be forfeited for failure to organize and commence the transaction of business within one year from filing articles, also by neglect, abuse, or surrender of its corporate rights (sec. 52; Stat., secs. 5357–5359).

**22. Annual Franchise Tax.**—There is no annual franchise tax in Oklahoma.

**23. Amendments.**—Articles may be amended in any particular, except for increasing or decreasing the capital stock, by having the directors and officers of the company execute new articles to be known as "Amended Articles of Incorporation." The latter must set forth clearly and specifically the

amendments desired. The articles as amended must be filed with the Secretary of the Territory (sec. 16). The foregoing section undoubtedly contemplates action by the stockholders on the proposed amendment prior to the execution of the certificate of amendment by the directors and officers.

To increase or diminish the capital stock action must be taken at a meeting of the stockholders called for that purpose by the directors as follows: (1) Notice of the time and place of the meeting, stating its object and the amount to which it is proposed to increase or diminish its capital stock, must be personally served on each stockholder resident in the Territory, at his place of business, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business, once a week for four weeks successively. (2) The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation or the estimated cost of the works which it may be the purpose of the corporation to construct. (3) At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution before it can be effected. (4) A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, and the vote by which the object was accomplished. (5) The certificate must be filed in the office of the Secretary of the Territory, there to be recorded in the book of corporations, and thereupon the capital stock shall be so increased or diminished. (6) The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock as if a meeting were called and held, and upon such written assent the directors may proceed to make the certificate herein provided for.

**24. Extension of Corporate Existence.** — Corporate existence may be extended, if desired, by compliance with the statute (sec. 262).

**25. Dissolution.** — Two-thirds vote of the stockholders authorizes petition for dissolution in the district court. Failure to commence business within one year from date of incorporation dissolves such company (Stat., secs. 5357-5359; chap. 16, Art. V. secs. 51, 52).

**26. Foreign Corporations.** — Foreign corporations must file in the office of the Secretary of the Territory an authenticated copy of their charter, and appoint an agent to receive process. This agent must reside in the county where the principal business of the corporation is to be carried on. An authenticated copy of the agent's appointment must be filed in the office of the Secretary of the Territory, and also in the office of the register of deeds of the county where the agent resides. Foreign corporations pay merely filing fees. These amounts vary anywhere from \$11.25 to \$20, owing to the length of the articles. There is no annual license fee imposed (chap. 18, Art. XXI. sec. 1167).

*Keokuk Falls Imp. Co. v. K. & D. M. Co.*, 5 Okla. 32; 47 Pac. 484; *Myatt v. Company*, 14 Okla. 220; 78 Pac. 185.

OREGON.

(The references cited below are to Bellinger & Cotton's Annotated Code and Statute (1902), unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Oregon is to be found in secs. 5052-5073 of chap. 1, Title 41, Bellinger & Cotton's Annotated Code of the Statutes of Oregon, as amended by the Laws of 1903. Under this act corporations may be formed for any lawful business enterprise.

2. **Incorporators.** — Three or more persons. There are no residential requirements (sec. 5052).

Rutherford v. Hill, 22 Ore. 218; 29 Pac. 546; Miller v. Company, 3 Ore. 25; Coyote etc. Co. v. Ruble, 8 Ore. 285.

3. **Contents of the Certificate of Incorporation.** — The certificate must set forth:

a. **Name.** — Similarity of names with existing corporations is expressly forbidden (Laws of 1903, p. 41).

b. **Duration.** — May be unlimited if desired.

c. **Purposes.** — Enterprise, business, pursuit, or occupation in which the corporation proposes to engage. State officials permit the insertion of any number of purposes in the articles.

Maxwell v. Akin, 89 Fed. 180.

d. **Domiciliary Office.** — Place where the corporation proposes to have its principal place of business or places of business.

e. **Capital Stock.** — Amount thereof, which is unlimited.

f. **Number and Par Value of Shares.** — These may be any amount.

g. If the corporation is formed for the purpose of navigation, constructing railroads, roads, canals, or bridges, the termini of such navigation road or of the site of the bridge must be set forth (sec. 5055).

Killingsworth v. Company, 18 Ore. 351; 23 Pac. 66.

4. **Statutory Powers.** — In addition to the statutory enumeration of common law powers the corporation has the following additional powers: To accept donations of real and personal property from cities, municipalities, and persons; to forfeit the stock of its members for non-payment of assessments; to permit railroad companies to consolidate; to authorize voting by proxy (secs. 5056, 5071); to sell all the property of the corporation upon the consent of two-thirds of the stockholders (Laws of 1905, chap. 194).

O. R. & N. Co. v. O. R. Co., 130 U. S. 1; 9 Sup. Ct. 409; Holladay v. Elliott, 8 Ore. 85.

5. **Procuring the Charter.** — The articles must be subscribed and acknowledged by each of the incorporators, and should be executed in triplicate. One of these must be filed in the office of the Secretary of State, another with the clerk of the county where the corporate business is to be carried on, or where the principal place of business is to be located, and a third should be retained in the possession of the company (sec. 5053). Before a certificate of incorporation will be issued, not only must the organization tax be paid, but the proportionate amount of the annual franchise tax for the first year as well

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(Laws of 1903, p. 44). The Secretary of State thereupon issues a certificate of incorporation (Laws of 1903, pp. 40, 41; Laws of 1905, chap. 50).

Wash., etc. *Ass'n v. Stanley*, 38 Ore. 319; 63 Pac. 489.

**6. Corporate Indebtedness.** — There is no limit upon the amount of corporate indebtedness.

**7. Organization Tax.** — Up to \$5,000, \$10; \$10,000, \$15; \$25,000, \$20; \$50,000, \$25; \$100,000, \$35; \$250,000, \$45; \$500,000, \$60; \$1,000,000, \$75; \$2,000,000, \$90; in excess of \$2,000,000, \$100 (Laws of 1903, pp. 39-49).

**8. Filing and Recording Fees.** — The payment of the organization tax covers the filing and recording fees in the office of the Secretary of State. For recording with the county clerk the fees are about \$1.25 (Laws of 1903, p. 41).

**9. Commencing Business.** — As soon as the articles are filed as required by law, and one-half of the capital stock has been subscribed, the corporation may commence the transaction of business. Directors must be elected and business commenced within one year from time of filing articles (secs. 5057, 5067; Laws of 1905, chap. 50).

*C. G. & S. M. Co. v. Ruble*, 8 Ore. 285; *Holladay v. Elliott*, 8 Ore. 85; *Willamette Freighting Co. v. Stanners*, 4 Ore. 262; *McVicker v. Cone*, 21 Ore. 353; 28 Pac. 76; *Nickum v. Burckhardt*, 30 Ore. 464; 47 Pac. 788; 48 Pac. 474.

**10. Organization Meeting.** — The organization meeting must be held within the State in the absence of any statute providing otherwise. Provision is made for the calling of the organization meeting. At the incorporators' meeting the incorporators act as inspectors of election, and certify that they will elect directors, and appoint time and place for their first meeting (sec. 5058). Directors cannot be elected until one-half of its capital stock has been subscribed (sec. 5057).

*Nickum v. Burckhardt*, 30 Ore. 464; 47 Pac. 789; 48 Pac. 474.

**11. Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State. The provision that a majority of the directors shall be residents of the State practically renders it necessary to hold the directors' meetings within the State unless the expedient is resorted to of delegating the powers of directors to an executive committee composed of a minority of the directors (sec. 5062). Under a recent amendment mining corporations may hold meetings of its directors outside of the State of Oregon (Laws of 1905, chap. 190).

*Doernbecher v. Company*, 21 Ore. 573; 28 Pac. 899.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be not less than three directors, all of whom must be stockholders, and, except in the case of mining corporations, a majority of the board must be residents of the State. In the case of mining corporations a majority of the directors may reside without the State (Laws of 1905, chap. 190). Each director must subscribe to an oath of office (sec. 5059). Less than a majority may constitute a quorum if desired (sec. 5062).

*Silsby v. Strong*, 38 Ore. 36; 62 Pac. 633.

*b. Liabilities.* — Directors are liable for the illegal declaration of dividends, and for the unlawful withdrawal of capital (sec. 5066).

*Patterson v. Thompson*, 86 Fed. 85; 90 Fed. 647.

**13. Stockholders' Liabilities.** — Stockholders are liable to the extent of their unpaid stock subscriptions (Cons., Art. XI. secs. 3, 5065).

*Lee v. Imbrie*, 13 Ore. 510; 11 Pac. 270; *Brundage v. Company*, 12 Ore. 322; 7 Pac. 314; *Hawkins v. Company*, 38 Ore. 544; 64 Pac. 320; *Aldrich v. A. C. & D. Co.*, 24 Ore. 32; 32 Pac. 756; *Balfour v. Company*, 27 Ore. 300; 41 Pac. 164.

**14. Stock Certificates.** — Each stockholder is entitled to a certificate showing the number of shares held by him, signed by such officers as the by-laws may prescribe.

**15. Preferred Stock.** — There is no express provision authorizing the issuance of preferred stock.

**16. Payment of Capital Stock.** — Stock may be paid for in money or money's worth.

On the subject of payment of capital stock the Supreme Court of Oregon has recently given utterance to the following valuable opinion :

"The appellant's contention is that the corporation, through its board of directors, exercised its best judgment as to values of properties taken over in exchange for stock, and acted in good faith in accepting the property, including the good-will of a partnership concern, in full payment of the capital stock issued, and therefore the transaction is unimpeachable at the suit of creditors; in other words, the stockholders must be held to be exonerated from all liability to the corporation for the benefit of the creditors, except in case of actual fraud charged against the corporation and stockholders, and affirmatively proven.

"The directors of a corporation, in the absence of a constitutional or statutory inhibition to the contrary, may receive property in payment for stock in any case in which they are authorized under the charter to purchase for the benefit of the corporation, and to subserve the purposes for which it is organized.

"If the nature of the property [so purchased] and the extent of the over-valuation thereof [by the directors] are such that the excess valuation may have possibly been due to error in honest conviction or judgment, then, to render the transaction invalid, actual fraud must be shown, and it is one of fact. The real question in cases of this character being whether the property was placed and taken at a high valuation with a fraudulent intent of evading the plain meaning of the law. It is competent for the determination of this question to take into consideration the value of the property, the purposes for which it is accepted, and all the conditions and circumstances attending and surrounding the transaction, and if, from the whole, it appears that the board has acted in good faith in the honest exercise of its best judgment, no adverse presumption impeding, then are its acts conclusive, otherwise not." *Macbeth v. Banfield* (Ore.), 78 Pac. 693.

**17. Books.** — The stock book and all other books of the corporation, necessary in carrying on its business, must be kept within the State at the principal office (sec. 5063). They are open to inspection at all reasonable hours.

**18. Office and Agent.** — Every corporation must maintain an office within the State at all times (sec. 5055). In the case of mining corporations the law provides that if the president thereof does not reside within the State, the corporation must at all times maintain an office within the State, in the county wherein its principal office is located, in charge of an agent upon whom process against the corporation may be served (Laws of 1905, chap. 190).

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19. **Reports.** — All corporations shall, during the month of June of each year, furnish the Secretary of State with a statement sworn to by one of the officers, setting forth the name of the corporation, location of its principal office, names of its president, secretary, and treasurer, and their post-office addresses, date of annual election of officers and directors, amount of authorized capital stock, number and par value of shares, amount of capital stock subscribed, amount issued and paid up (Act of Feb. 16, 1903, sec. 5). Mining corporations must, during the month of June in each year, furnish to the Secretary of State a report setting forth certain particulars as to their business. Mining corporations whose annual output shall not exceed the sum of \$1,000, shall, upon the filing of such report, be exempt from the payment of the annual license fee now provided by law, and in lieu thereof shall pay an annual license fee of \$10. It can, however, avoid the making of such report, if it shall pay the annual license fee required of other domestic corporations of like capitalization (Laws of 1905, chap. 50).

20. **Anti-Trust Statute.** — There is no anti-trust statute in force in Oregon.

21. **Statutory Grounds for Forfeiture of Charter.** — Charters may be forfeited, if the corporation for any period of six months after the commencement of business neglects or ceases to carry on the same. It may also be forfeited for abuse or misuser of its corporate powers, or for failure to elect directors and commence business within one year after filing articles of incorporation (sec. 5067). The right to transact business is in abeyance while the annual franchise tax is in default (Laws of 1903, p. 39 *et seq.*). The charter may be forfeited for non-payment of license fee for two successive years (Laws of 1905, chap. 172).

22. **Amendments.** — Any corporation may, at any meeting of the stockholders called for that purpose, by a vote of a majority of the stock, increase or diminish its capital stock or the amount of shares thereof (sec. 3235; Hills' Annotated Laws of Oregon). The stockholders may, by a majority vote of the stock, change the general place of business (sec. 3237, Hills' Annotated Laws of Oregon).

The directors of any corporation may file supplemental articles of incorporation at any time when a three-fourths vote of all the stock subscribed shall so determine, for the purpose of engaging in any business cognate or germane to the original objects or primary purposes of said corporation not in violation of law, or at any time when a seven-eighths vote of all the stock subscribed shall so determine, for the purpose of engaging in any new enterprise or pursuit not in violation of law, or for the purpose of change in part of their road or canal or other terminus, or both, when not in violation of law or any contract entered into by such corporation; the directors shall cause a notice to be published of the filing of such supplemental articles setting forth the object of the same (sec. 3238; Laws of 1905 chap. 50).

23. **Extension of Corporate Existence.** — There is no provision for the extension of corporate existence.

24. **Dissolution.** — Corporations may be dissolved by a majority vote of the stockholders of the corporation (sec. 5070; Laws of 1903, p. 41).

25. **Annual License Fee.** — Upon an authorized capital stock up to \$5,000, \$10; up to \$10,000, \$15; to \$25,000, \$20; to \$50,000, \$30; to \$100,000, \$50; to \$250,000, \$70; to \$500,000, \$100; to \$1,000,000, \$125; up to \$2,000,000, \$175; in excess of \$2,000,000, \$200 (Act of Feb. 16, 1903, sec. 5). Under a recent act mining corporations whose annual output shall not exceed



\$1,000 are exempt from this tax, but are required to pay in lieu thereof an annual license fee of \$10 (Laws of 1905, chap. 214).

26. **Foreign Corporations.** — A foreign corporation must file with the Secretary of State a declaration of its purposes to engage in business within the State, and state name under which it proposes to transact business, name of State under whose laws it is organized, location of its home office, date of its incorporation, amount of capital stock, nature of its business, location of its principal office within the State, name of its attorney in fact, names and addresses of its principal officers and directors, and name and residence of principal agent within the State; also certified copy of its charter, certified to by the legal keeper of the original, together with a certificate of the Secretary of State of the State issuing the charter as to whether said articles of incorporation are genuine; and must pay to the Secretary of State \$50 for filing and recording the same, together with annual license fee for the succeeding fraction of the year. The annual license tax is the same as for domestic corporations. Must also file annual reports same as domestic corporations, and must appoint an attorney within the State upon whom process may be served (Act of Feb. 16, 1903, secs. 6, 7).

*O. & W. T. J. Co. v. Rathburn*, 5 Saw. 32; *Commercial Bank v. Sherman*, 28 Ore. 573; 43 Pac. 658; *Singer Mfg. Co. v. Graham*, 8 Ore. 18; *Aldrich v. Anchor Coal, etc. Co.*, 24 Ore. 32; 32 Pac. 756.

## PENNSYLVANIA.

(The references below are to the Legislative Assembly Laws of Pennsylvania for the various years mentioned, and are referred to under the date the act was adopted, together with the reference to pages of the Pamphlet Laws of that particular year. The latter are referred to as P. L.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Pennsylvania is to be found in the Act of April 29, 1874, found in the Pamphlet Laws for that year, page 73. This act has been more or less amended at nearly every legislative session held since the law was enacted. Special acts are provided for banking, canal, coal, navigation, railway, pipe-line, street railway, motive power, natural gas, domestic insurance, and co-operative companies. Under the law as it now stands corporations may be formed for the transaction of any one kind of lawful business not otherwise provided for (1893, June 10, P. L. 435; 1901, July 9, P. L. 624, sec. 1; 1903, April 23, P. L. 204).

2. **Incorporators.** — Three or more persons, one of whom must be a citizen of Pennsylvania (1901, May 29, P. L. 326, sec. 1; 1903, April 23, P. L. 273).

3. **Contents of the Certificate of Incorporation.** — The certificate must set forth:

*a. Name.* — Similarity of names is forbidden. A charter will be refused where the proposed name is already in use by another domestic corporation (1874, April 29, P. L. 73, sec. 3; 1903, April 22, P. L. 251).

*American Clay Mfg. Co. v. Company*, 198 Pa. 189; 47 Atl. 936; *Nether Providence Ass'n*, 12 P. A. C. 666.

*b. Purposes.* — Purposes for which corporation is formed. Only one purpose may be inserted (Id.). Certificates for incorporation of manufacturing or mercantile companies must describe in a general way the goods to be manufactured or sold (1874, April 29, P. L. 73, sec. 3; 1893, June 10, P. L. 435).

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See cases in Vol. 3 of Pepper & Lewis' Digest of Pennsylvania Decisions, pp. 4769-4777, 4801-4808).

c. *Domicile*. — Place or places where business is to be transacted (Id. 1874, April 29, P. L. 73, sec. 3).

d. *Duration*. — Term of existence. May be perpetual if desired (1874, April 29, P. L. secs. 1, 3, 4).

e. *Subscribers' Names and Subscriptions*. — Names and residences of subscribers and number of shares subscribed for by each (1874, April 29, P. L. 73, sec. 3).

f. *Directors*. — Number of directors to be not less than three. Also names and residences of those for the first year (1874, April 29, P. L. 73, sec. 3; 1901, April 19, P. L. 51).

g. *Capital Stock*. — Amount thereof. Number and par value of shares. Capital stock may be any amount. Par value of shares must not exceed \$100 (1874, April 29, P. L. 73, secs. 3, 11, 39; 1899, May 3, P. L. 120; 1901, Feb. 9, P. L. 1; 1901, July 2, P. L. 302).

h. *Preliminary Payment of Stock Subscriptions*. — A statement that ten per cent of the capital stock has been paid in to the treasurer, together with his name and residence (1874, April 29, P. L. 73, sec. 3).

*Cook v. Marshall*, 191 Pa. 315; 43 Atl. 314.

4. **Statutory Powers**. — The statute enumerates the common law powers of corporations (1874, April 29, P. L. 73, sec. 1). The following additional powers are also conferred: To consolidate with other corporations (1901, May 29, P. L. 349; 1905, March 31, P. L. 95). To purchase and hold stock in other corporations (1905, March 31, P. L. 95; 1895, June 26, P. L. 278, sec. 1; 1901, July 2, P. L. 298; 1887, June 17, P. L. 411, sec. 3). To issue preferred stock (1874, April 29, P. L. 73, secs. 16, 39; 1872, April 3, P. L. 39, sec. 1; 1873, April 28, P. L. 39, sec. 1). To vote by proxy (1874, April 29, P. L. 73, sec. 6; 1820, March 28, 7 Sm. L. 320, sec. 1; 1903, March 5, P. L. 14). To enforce a lien for corporate debts (1874, April 29, P. L. 73, sec. 39). To forfeit stock for non-payment of assessments (1895, June 26, P. L. 278, sec. 1). To cumulate votes in the election of directors and to classify directors (1876, April 25, P. L. 47, sec. 1; 1887, June 17, P. L. 411, secs. 1, 2). The power to adopt by-laws may be delegated by the charter to the board of directors (1891, May 14, P. L. 61, sec. 1. See generally on Corporate Powers, Constitution, XVI., secs. 6, 7; 1874, April 29, P. L. 73, secs. 38, 39, 43; 1887, May 24, P. L. 188, sec. 1; 1868, March 31, P. L. 50, sec. 1; 1893, May 18, P. L. 81, sec. 1; 1905, March 31, P. L. 95.)

5. **Procuring the Charter**. — The certificate must be subscribed and acknowledged by at least two of the incorporators, who must also swear that the statements contained in the certificates are true. Notice of intention to apply for charter must be inserted in two newspapers of general circulation published in the proper county once a week for three weeks, stating the character and object of the proposed corporation. The notice of intention to apply for charter should give the names of at least three incorporators, designating the time when application will be made to the Governor for the charter, the Act of the Assembly under which it is made and the purposes proposed. The proof of publication of the notice must be filed in the office of the Secretary of State upon the recording of the certificate. The certificate of organization should be on file in this office during the period of publication. Re-advertisements will be required for applications received thirty days after the time

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designated in the notice. The certificate must have at least two subscribers, one of whom must be a citizen of the Commonwealth, and must be acknowledged and verified by at least two subscribers. The object of the corporation should be restricted to the purposes set forth definitely in the incorporation act, and so concisely stated as to be void of diversity. Special care should be taken that only the purpose is stated and not the powers which come to the corporation by grant of law, and that the certificate be confined to the statement of a single purpose. Certificates for the incorporation of manufacturing and mercantile companies should describe in a general way the character of the articles to be manufactured and sold. The certificate, together with proof of publication, must then be forwarded to the Governor, who, if he approves of it, endorses his approval thereon and directs letters patent to issue. The certificate is then recorded in the office of the Secretary of State, registered with the Auditor-General, and the original articles, with the endorsement mentioned, must then be recorded in the office of the recorder of deeds of the county where the chief operations of the company are to be carried on (1874, April 29, P. L. 73, secs. 3, 4, 26, 45; 1891, April 15, P. L. 18; 1874, May 15, P. L. 107; 1901, May 29, P. L. 207; 1903, April 23, P. L. 273).

*M. B. Co. v. Company*, 196 Pa. St. 25; 46 Atl. 99.

6. **Corporate Indebtedness.** — Loans to an amount not exceeding one-half the capital stock may be made on real estate and machinery, or on real estate alone. Corporations belonging to classes designated in the statute as 4, 5, 6, 7, 9, 11, 24, may borrow money to an amount not exceeding double the amount of capital stock paid in. Under Laws of 1901, Act 1, all limitations as to the borrowing power of corporations, other than those in the classes above enumerated, are removed (1874, April 29, P. L. 73, secs. 38, 39; 1874, April 18, P. L. 61, sec. 1; 1874, May 15, P. L. 86, sec. 1; 1879, May 13, P. L. 57, sec. 1; 1881, June 8, P. L. 69, sec. 1; 1889, May 21, P. L. 257, sec. 1). Under the Laws of 1905, chap. 190, all business corporations are given right to mortgage and pledge without limitation as to amount.

7. **Organization Tax.** — A bonus of one-third of one per cent upon the authorized capital stock must be paid (1878, May 22, P. L. 97, sec. 1; 1897, June 15, P. L. 155; 1899, May 3, P. L. 120; 1899, May 7, P. L. 115, sec. 1; 1901, Feb. 9, P. L. 1).

8. **Filing and Recording Fees.** — Filing fees in the office of the Secretary of State, usually \$30; recording fees in local county office, 25 cents per folio; fee upon organization for filing statements, \$5; cost of publishing notice of application for letters patent, usually about \$9. In Philadelphia the cost of publishing notice is usually about \$13.

9. **Commencing Business.** — Before the corporation can commence business ten per cent of the authorized capital stock must have been paid in to the treasurer of the intended corporation. The corporation cannot commence business without first filing with the Auditor of the Commonwealth the name of the corporation, the date of the incorporation, the authority under which incorporated, place of business, post-office address and names of the president, secretary, and treasurer, the amount of capital authorized by the charter, and amount of capital paid in to the treasurer of the company (1876, April 17, P. L. 30, sec. 6; 1879, June 7, P. L. 112, sec. 1; 1880, June 1, P. L. 420, sec. 19). Business must be commenced within two years after incorporation (1889, May 16, P. L. 241, sec. 2; 1883, June 13, P. L. 122, sec. 5; see *Corporation Officers*, 3 Pa. C. C. 188; *Potter Gas Co.*, 15 Pa. C. C. 347).

10. **Organization Meeting.** — The organization meeting must be held within the Commonwealth, unless a majority of the incorporators or stockholders are citizens of another State (1891, May 14, P. L. 61, sec. 1). When a majority of the directors, corporators, or stockholders thereof are citizens of another State, the corporation may be organized without the State if desired (1865, Feb. 27, P. L. (1866,) 1228, sec. 1; 1874, April 29, P. L. 73, sec. 6; 1826, March 28, 7 Sm. L. 320, secs. 1, 2).

11. **Meetings of Stockholders and Directors.** — The annual meetings for the election of officers must be held in the State of Pennsylvania. Special stockholders' meetings and meetings of the board of directors may be held without the State, if a majority of the stockholders and a majority of the directors are respectively citizens of another State (1865, Nov. 27, P. L. (1866) 1228, sec. 1). Iron and steel corporations may hold all meetings without the State if desired (1820, March 28, 7 Sm. L. 320, secs. 1, 2; 1874, April 29, P. L. 73, sec. 6; 1893, June 8, P. L. 351).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors, one of whom must be a resident of the State. Directors need not be stockholders (Corporate Directors, 7 Pa. C. C. 178). If the by-laws so provide, the number of directors may be changed from time to time by the directors without a vote of the stockholders and without amending the certificate of incorporation. Directors may be classified if desired. If the certificate so provides, directors may adopt by-laws (1891, May 14, P. L. 61, sec. 1). The right of stockholders to cumulate their votes in the election of directors is a constitutional right (1874, April 29, P. L. 74, sec. 38; 1876, April 25, P. L. 47; 1877, June 17, P. L. 411, secs. 1, 2; 1887, May 31, P. L. 281, sec. 1; 1887, June 17, P. L. 411; 1901, April 19, P. L. 80, sec. 1).

*Commonwealth v. Stevenson*, 200 Pa. St. 509; 50 Atl. 91.

*b. Liabilities.* — Directors are liable for the declaration of illegal dividends and for the illegal withdrawal of capital stock. They are also liable to creditors and stockholders for moneys embezzled by officers (1874, April 29, P. L. 73, sec. 39; 1878, June 12, P. L. 196, sec. 1).

*Strunk v. Owen*, 199 Pa. St. 73; 48 Atl. 888.

13. **Stockholders' Liabilities.** — Stockholders are liable to the extent of their unpaid stock subscriptions. They are also liable for debts to laborers, clerks, and operatives for services rendered within six months after demand made and neglect or refusal on the part of the corporation to make payment. This liability extends to the amount of stock held by each stockholder. They are also jointly and severally liable for all debts contracted by them for work or labor done, or materials furnished for opening, improving, and preparing of their lands for mining purposes. They are also liable for the illegal withdrawal of capital (Cons., XVI., sec. 7; 1854, April 21, P. L. 437, sec. 5; 1874, April 29, P. L. 73, secs. 15, 24, 38, 39; 1876, April, 17, P. L. 32, sec. 3).

*Adv. Ben. Order v. Company*, 195 Pa. St. 602; 46 Atl. 102; *Bates v. Day*, 198 Pa. St. 513; 48 Atl. 407; *McNeal Pipe*, etc. Co. v. Bullock, 174 Pa. St. 93; 34 Atl. 594.

14. **Stock Certificates.** — Each stockholder is entitled to a certificate signed by the president or vice-president, and countersigned by the treasurer, and sealed with the seal of the corporation (1874, April 29, P. L. 73, sec. 7; 1895, June 24, P. L. 258).

15. **Preferred Stock.** — Preferred stock may be issued, if authorized in the certificate of incorporation, or with the consent of a majority in interest of the

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stockholders after incorporation. It may be divided into classes if desired. The amount of preferred stock cannot at any time exceed one-half of the authorized capital stock. The amount of dividends thereon is limited to twelve per cent. The holders of preferred stock are not liable for debts of the corporation (1872, April 3, P. L. 37, sec. 1; 1873, April 28, P. L. 79, sec. 1; 1874, April 29, P. L. 73, secs. 16, 39).

**16. Payment of Capital Stock.** — Stock may be issued in exchange for money, labor done, or property actually received. Stock may be issued for real and personal estate, mineral rights, patent rights, and other property necessary for the purposes of organization. The stock so issued shall be declared and taken to be full-paid stock and not liable to any further calls or assessments. One-quarter of the capital stock must be paid up within two years. No note of a stockholder can be accepted in payment of stock. The president and directors, with the treasurer and clerk, must, in the case of manufacturing companies, before the payment of the last instalment of the capital stock, make a certificate stating the amount of the capital so fixed and paid in, which certificate must be signed and sworn to by the officers last mentioned, and must be recorded in the office of the recorder of deeds for the county wherein the corporation has its principal place of business. (See Cons., XVI. sec. 7; 1874, April 29, P. L. 73, sec. 39; 1876, April 17, P. L. 30, sec. 4; 1895, June 26, P. L. 369, sec. 1; 1905, March 24, P. L. 39.)

**17. Books.** — Directors of manufacturing, mechanical, mining, quarrying, and other business, provided in sec. 18 of the enumeration of the classes of business corporations, are required to keep a stock book or stock register, which must be opened for inspection during business hours to all persons (1849, April 7, P. L. 563, sec. 24).

*Commonwealth v. Phoenix Iron Co.*, 105 Pa. 111.

**18. Office and Agent.** — Aside from all iron and steel manufacturing companies, the principal office of all business corporations must be located in the State, and the place where the business is to be transacted must be designated in the certificate. In the case of iron and steel companies, the latter may have an office without the State, if the by-laws so authorize, where meetings of stockholders and directors may be held (1874, April 29, P. L. 73, secs. 3, 38).

**19. Reports.** — Every corporation shall make an annual report, in the month of November, of the condition of the corporation. Special provisions require annual reports from manufacturing, railroad, canal, navigation, and telegraph companies (1874, April 29, P. L. 73, secs. 38, 39; 1891, June 8, P. L. 229, sec. 4; 1905, April 14, P. L. 166).

**20. Anti-Trust Statute.** — There is no anti-trust statute. (See *Nester v. Company*, 161 Pa. St. 473; 29 Atl. 102.)

**21. Statutory Grounds for Forfeiture of Charter.** — Charter may be forfeited for failure to organize within two years after the issuance of charter. It may also be forfeited for misuser or non-user, or by the commission of any act whereby forfeiture thereof shall by law be created. Neglect to pay the bonus tax renders the charter liable to forfeiture (1836, June 14, P. L. 621, sec. 2; 1883, June 13, P. L. 123, sec. 5; 1901, May 21, P. L. 176).

**22. Amendments.** — Charters may be amended for the purpose of improving, amending, or altering the conditions upon which they were formed and established, by securing the approval of the governor to such proposed amendment. Notice of intention to apply for such amendment must be given by

publication thereof in two newspapers of general circulation, printed in the county wherein the corporation's principal place of business is located, once a week for three weeks. This notice must set forth briefly the character and objects of the desired improvements, amendments, or alterations, and the intention to make application therefor. Thereupon the corporation shall prepare a certificate under its corporate seal, setting forth the character and objects of the proposed amendment; also setting forth that all reports required by the Auditor-General of the Commonwealth have been filed, and that all taxes due the Commonwealth of Pennsylvania have been paid. This certificate must be acknowledged by the president and secretary of the corporation before a recorder of deeds of the county wherein such corporation has its principal office or place of business, which certificate, together with proof of publication of notice, shall then be produced to the Governor of the Commonwealth for his approval. After this is obtained, the certificate shall then be recorded in the office of the Secretary of the Commonwealth, and with all these endorsements shall then be recorded in the office of the recorder of deeds in and for the proper county wherein the principal place of business of such corporation is located (1883, June 13, P. L. 122, secs. 1-4, as amended by 1905, March 3, P. L. 93).

The capital stock or indebtedness, or both, of any corporation created by general or special law may, with the consent of all persons or bodies corporate holding the larger amount in value of its stock, be increased to such amount in the aggregate of which with regard to the amount of the other regardless of any limitation upon the amount of either prescribed in any general or special law regulating any such corporation as it shall deem necessary to accomplish, carry on, and enlarge the business and purposes of such corporation. Such increase of either may be made at once or from time to time, as a majority in interest of the stockholders shall determine, as aforesaid; and upon the authorization of any such increase or indebtedness by the stockholders of such corporation in the manner herein provided for, it shall be lawful for such corporation to secure the payment of the principal or interest, or both, of all or any part of such indebtedness by mortgage or deed of trust or other valid deed convenient by way of security of all or any part of its real and personal property, rights, privileges, and franchises, and in such manner and upon such terms as its board of directors shall determine (1899, May 3, P. L. 189, sec. 2; 1901, Feb. 9, P. L. sec. 1; 1905, April 22, P. L. 280).

The capital stock of any corporation created by general or special law may be reduced from time to time by consent of all persons or bodies corporate holding the larger amount in value of the stock of such corporation, provided that such reduction shall not be below the minimum amount of capital stock required by law for the formation of corporations formed for similar purposes (1905, April 22, P. L. 264). As preliminary to the increase of stock, the board of directors, by a majority vote, must call a meeting of the stockholders to vote thereon. The question may be presented either at any annual meeting or a special meeting called by publishing notice of the time, place, and object thereof once a week for sixty days prior thereto, in at least one newspaper published in the locality wherein the corporation's principal place of business is located. Within thirty days after the proper consent is given to such increase, the corporation must file in the office of the Secretary of the Commonwealth one of the copies of the certificate of the president and secretary of the annual meeting, or one of the copies of the return of such

election at the special meeting held for that purpose, with a copy of the resolution and notice calling the same thereto annexed. Also the president and treasurer must, within thirty days thereafter, make a return to the Secretary of the Commonwealth, under oath, of the amount of such increase actually made; and concurrently therewith the bonus tax on the increase must be paid (1901, Feb. 9, P. L. secs. 1-3).

To change the par value of the shares requires that such change shall be authorized by a majority of the stockholders at any annual or special meeting called for that purpose. Upon the adoption of any such amendment, the proper officers of the company must file a certificate of that fact in the office of the Secretary of the Commonwealth, under the seal of the corporation (1901, July 2, P. L. 606, sec. 2).

The board of directors may change the location of the principal office, place, and time of the annual meeting of stockholders by a two-thirds vote of the board, approved by two-thirds vote of the stockholders. Upon such action being taken, the president must file in both the office of the Secretary of State and Auditor-General a report under seal of the corporation specifying the changes so made (1830, Feb. 6, P. L. 42, sec. 2; 1893, June 8, P. L. 355, sec. 1).

*Cook v. Marshall*, 191 Pa. St. 315; 43 Atl. Rep. 315.

To change the corporate name requires a resolution of the board of directors, adopted by a two-thirds vote thereof, approved at any annual or special meeting of the stockholders duly called by a two-thirds vote thereof. Thereupon the president of the corporation shall file in the office of the Secretary of the Commonwealth a certificate under the seal of the company, setting forth the resolution adopted by the board of directors and approved by the stockholders, the date of the adoption of such resolution by the board of directors, the date of the approval by the stockholders, the date of the original incorporation of the company, the Act of Assembly under which the said corporation was created, the name under which it was originally incorporated, and the name which the corporation desires to adopt. All corporations required to record the original certificate of incorporation in the office for the recording of deeds, must likewise record, in the office for the recording of deeds where the original certificate of incorporation was recorded, the certificate granted by the Secretary of the Commonwealth authorizing the use of the new corporate name (1903, April 22, P. L. 257).

**23. Extension of Corporate Existence.** — Provision is made for the extension of corporate existence of business corporations (1874, April 29, P. L. 73, secs. 4, 40; 1895, June 25, P. L. 310).

**24. Dissolution.** — Court of common pleas may accept surrender of powers and enter a decree dissolving corporation, with consent of a majority of the stockholders, and after advertisement in two newspapers (1856, April 9, P. L. 283, sec. 1; 1872, April 4, P. L. 40, sec. 1; 1887, May 31, P. L. 278, secs. 1, 3; 1903, March 27, P. L. 79).

*M. B. Co. v. Company*, 196 Pa. St. 25; 46 Atl. 99.

**25. Annual License Fee.** — Five mills upon each dollar of the actual value of its whole capital stock of all kinds, including common, special, and preferred, must be paid to the Treasurer of the Commonwealth annually within thirty days from date of settlement of the account by the Auditor-General and State Treasurer. Manufacturing companies with property

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exclusively in the State are generally exempt from this annual license fee (1893, June 8, P. L. 353, sec. 1; 1899, May 3, P. L. 120).

**26. Foreign Corporations.** — Statement must be filed with the Secretary of the Commonwealth, showing name and object of the corporation, location of its office, and resident agent therein; must also pay State Treasurer a bonus of one-third of one per cent upon the capital actually employed or to be employed wholly within the State; must file annual report with the Auditor-General. Foreign corporations may become domestic, if they so desire, by complying with the statute in such case made and provided. The same annual tax is required as of domestic corporations (1874, April 22, P. L. 108, secs. 1, 5; 1881, June 9, P. L. secs. 1, 3; 1887, May 23, P. L. 176, secs. 1, 2; 1893, June 8, P. L. 389, secs. 1, 2; 1893, June 16, P. L. 466, sec. 1; 1901, May 8, P. L. 121, secs. 1, 2, 3, 7; 1903, April 15, P. L. 200; 1903, Feb. 5, P. L. 4; 1903, March 11, P. L. 23; 1903, March 26, P. L. 67; 1905, Feb. 28, P. L. 27).

*McCanna & Fraser Co. v. Citizens Trust, etc. Sur. Co.*, 76 Fed. 420; 24 C. C. A. 11; *Commonwealth v. Company*, 98 Penn. 90; *In re Hovey's Estate*, 198 Pa. St. 385; 48 Atl. 311; *P. B. L. & S. Ass'n v. Berlin*, 201 Pa. St. 1; 50 Atl. 308; *Madden v. Company*, 199 Pa. St. 454; 49 Atl. 296.

## RHODE ISLAND.

(The references cited below are to General Laws, 1896, unless otherwise stated.)

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Rhode Island is to be found in the General Laws, chaps. 176, 177, 180. Under this act corporations may be formed for the transaction of any ordinary business, except railroad, canal, turnpike, insurance, banking and trust companies, and corporations created for dealing in bonds, notes, and other evidences of indebtedness.

**2. Incorporators.** — Three or more persons. No residential requirements (chap. 176, sec. 2).

**3. Contents of the Certificate of Incorporation.** — The certificate must set forth:

*a. Name.* — Agreement to constitute an ordinary business corporation under a designated name. The latter must be one that must not be mistaken for that of a copartnership, and one not in use by an existing domestic corporation.

*b. Purposes.* — Business for which it is constituted. State officials construe this to authorize the insertion of any number of purposes in the articles not covered by special acts.

*c. Domiciliary Office.* — Town or city in which it is to be located.

*d. Capital Stock.* — Amount of capital stock, whether common or preferred, and how much of it, and the par value of shares. Capital stock may be any amount. The par value of shares may be any amount. If preferred stock is desired, the articles must set forth the advantages thereof over common stock (chap. 176, sec. 2).

*e.* If desired, provision may be made that the corporation shall have a lien on all shares for indebtedness of the shareholders due to the corporation. The right may also be given to the corporation in case of sale of stock by any stockholder to purchase said stock at the lowest price at which he is willing to sell before the same shall be sold by him to any other party (sec. 9).



Corporate existence may be unlimited if desired.

4. **Statutory Powers.** — In addition to a statutory enumeration of common law powers, the following additional powers are conferred: The right to authorize voting by proxy; the right to issue preferred stock; the creation of a lien upon shares for assessments or indebtedness due the corporation; the right to forfeit such stock for non-payment of assessments (chap. 177, secs. 1, 3, 9).

5. **Procuring the Charter.** — The agreement must be signed by each of the incorporators, with their residences set forth and jointly acknowledged. The agreement must then be filed in the office of the Secretary of State, together with the certificate of the general treasurer, that the organization tax has been paid (chap. 176, secs. 3, 4). Thereupon he issues a certificate of incorporation in the form prescribed by statute (chap. 176, sec. 4). As soon as a treasurer is elected, his name and address must be filed with the Secretary of State (Laws of 1902, chap. 975). If the treasurer be a non-resident, then the corporation must appoint an agent residing within the State with authority to accept service of process in behalf of the corporation.

6. **Corporate Indebtedness.** — Corporate indebtedness in manufacturing corporations cannot be created beyond the amount of the actual capital paid in (chap. 180, sec. 15).

7. **Organization Tax.** — On capital stock less than \$100,000, the tax is \$100; on capitalization of \$100,000 or more, the tax is one-tenth of one per cent on authorized capital stock. The tax is payable to the General Treasurer.

8. **Filing and Recording Fees.** — The payment of the organization tax includes the filing and recording fees in the office of the Secretary of State. The Secretary of State charges \$1 for issuing a certificate of incorporation, and \$1.50 for issuing a certified copy of the certificate of incorporation.

9. **Commencing Business.** — Business may be commenced as soon as the articles are filed as prescribed by law. Within thirty days after organization there must be filed with the Secretary of State a certificate under oath of the treasurer, or other officer authorized to make same, setting forth the name of the corporation, date of organization, amount of capital stock actually paid in upon organization, the town in which such corporation is located, and the name and post-office address of its treasurer (chap. 177, sec. 24). Corporation must be organized within two years after incorporation (chap. 177, sec. 23).

10. **Organization Meeting.** — The organization meeting must be held within the State, in the absence of any statute providing otherwise. (See chap. 177, sec. 4.)

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State. Directors' meetings may be held without the State if the by-laws so provide (chap. 177, sec. 3).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — The number of directors is not limited; nor are there any residential requirements.

*b. Liabilities.* — Directors of manufacturing corporations are liable to the creditors for failure to file a certificate executed by themselves, together with the president, treasurer, and clerk of the company, within ten days after the payment of the last instalment of the capital stock fixed and limited by the charter, or by vote of the company, stating the amount of the capital so fixed and paid in. The certificate must then be recorded within the said ten days in the office of the town clerk of the town wherein the manufactory shall be established. They are also liable for illegal declaration of divi-

dends. They are also liable to the extent of the debts created by them in excess of the amount of stock actually paid in. Directors are also liable for making false certificates, knowing them to be false. They are also liable for making loans to stockholders to the extent of such loan and interest thereon (chap. 180, secs. 2, 3, 6, 15, 16, 20, 21).

**13. Stockholders' Liabilities.** — Stockholders are liable to the extent of their unpaid stock subscriptions (Laws of 1901, chap. 839. As to liability of stockholders in manufacturing corporations, see chap. 180, sec. 1).

*Wing v. Slater*, 19 R. I. 597 ; 35 Atl. 302.

**14. Stock Certificates.** — Each stockholder is entitled to a stock certificate showing the number of shares held by him, signed by such officers as the by-laws may prescribe.

**15. Preferred Stock.** — The issue of preferred stock is expressly authorized by law, and provision therefor must be made in the articles of incorporation (chap. 176, secs. 2, 7).

**16. Payment of Capital Stock.** — Stock in all companies, save manufacturing, must be paid for in money or money's worth. In the case of manufacturing companies stock may be issued in exchange for property appraised by the assessors of taxes according to its fair valuation. The amount of the capital stock represented by such property shall not exceed the sum at which the same may be appraised by the certificate of such instrument, signed and sworn to by the assessors making the same, and must be recorded before the liability of the stockholders of such corporation for the debts contracted shall cease.

**17. Books.** — Books are required to be kept within the State (chap. 177, sec. 19).

**18. Office and Agent.** — All corporations must have a place of business within the State, and shall have a clerk, treasurer, or other agent, who shall reside therein (chap. 177, sec. 21). The officer whose duty it is to record stock transfers must be a resident of the State.

**19. Reports.** — There are no annual reports required.

**20. Anti-trust Statutes.** — There is no anti-trust statute in force in Rhode Island.

**21. Statutory Grounds for Forfeiture of Charter.** — The charter may be forfeited for failure to organize within two years after filing articles of agreement (chap. 177, sec. 23).

**22. Amendments.** — The law provides that the articles of incorporation may be amended in any particular except to the extent of permitting the corporation to hold, transfer, and convey real and personal estate to an amount exceeding \$100,000, by the vote of the corporation and the filing in the office of the Secretary of State of a copy of such vote, duly attested by the president and secretary of the corporation (chap. 176, 7, 8, secs. 13, 14).

In the case of increase of capital stock, corporations must, within thirty days after such increase, file in the office of the Secretary of State a certificate under oath of its treasurer setting forth the name of the corporation, the date of organization, the amount of capital stock actually paid in upon organization, the amount of increase of capital stock paid in, with the date thereof, the town in which such corporation is located, and the name and post-office address of its treasurer (chap. 177, sec. 24).

**23. Extension of Corporate Existence.** — There is no statutory provision for the extension of corporate existence.

24. **Dissolution.** — Corporate powers cease if organization is not completed within two years, and court of common pleas may dissolve any company for non-user. May also dissolve voluntarily by resolution of stockholders representing a majority of capital stock (chap. 177, sec. 23; Laws of 1902, Act 556).

25. **Annual License Fee.** — There is no annual license fee.

26. **Foreign Corporations.** — Foreign corporations must file with the Secretary of State declaration designating principal place of business in State and name of agent to receive service of process, and must also file in same office copy of the charter and by-laws with amendments. Must also file annual statement showing residence of corporation, amount of capital stock actually paid, names of officers and board of directors, with their residences (Stat., secs. 1466, 1467, 1469). Foreign corporations must appoint by written power some resident of the State as their attorney with authority to accept service of process against such corporation in this State, and upon whom all process may be served. A copy of such power of attorney duly certified and authenticated shall be filed with the Secretary of State (Laws of 1902, chap. 980).

*Pierce v. Compton*, 13 R. I. 312; *Stafford & Co. v. American Mill Co.*, 13 R. I. 310; *Evans v. Pease*, 21 R. I. 187; 42 Atl. 506.

## SOUTH CAROLINA.

(The references cited below are to the Code of Laws, 1902, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of South Carolina is found in the Code of Laws of 1902, chaps. 47, 48. Parties may incorporate under this act for any purpose whatsoever.

2. **Incorporators.** — Two or more persons. There are no residential requirements (chap. 48, sec. 1880).

3. **Contents of the Petition for Incorporation** (chap. 48, sec. 1880). — The petition must set forth:

*a. Incorporators.* — Names and residences of the incorporators.

*b. Name.* — Name of the proposed corporation. Similarity of names not forbidden.

*c. Domiciliary Office.* — Principal place of business.

*d. Purposes.* — May be formed for any number of purposes not covered by special acts.

*R. G. Co. v. Company*, 126 Fed. 712.

*e. Capital Stock.* — Amount of capital stock, and how and when payable. Both capital and par value of shares may be any amount.

*f. Number and Par Value of Shares* (see *e*, ante).

*g. Provisions for Internal Regulation of Affairs.* — Any other matter may be inserted which it is deemed desirable to set forth. Duration may be unlimited if desired (sec. 1891).

4. **Statutory Powers.** — In addition to the statutory enumeration of common law powers, the following additional powers are granted by statute: To cumulate votes in the election of directors; to have a lien upon the shares of stockholders; to issue preferred stock; to enforce payment of assessments due upon capital stock; to forfeit the stock for non-payment thereof; to vote by proxy in the election of directors; to enforce a lien upon the stock of

stockholders for debts due the corporation (chap. 47, secs. 1843, 1846, 1848, 1856, 1863; chap. 48, sec. 1893; see also Laws of 1903, pp. 74, 79; Laws of 1905, chap. 418).

*Ex parte* Fisher, 20 S. C. 190.

5. **Procuring the Charter.** — The petition must be signed and acknowledged by each of the incorporators, and then be recorded by the Secretary of State. He then issues to the incorporators a commission constituting them a board of corporators, and authorizing them to open books of subscription to the capital stock of the proposed corporation, after such public notice, not exceeding ten days, as may be required in such commission. When not less than fifty per cent of the capital stock shall have been subscribed by *bona fide* purchasers, the board of corporators shall call the subscribers together. At this meeting the company shall organize by the election of a board of directors, not to exceed nine in number. They shall also adopt by-laws. The board of directors shall then elect from their number a president, a secretary, and a treasurer. Upon the payment to the treasurer of the corporation of at least twenty per cent of the aggregate amount of the capital subscribed, payable in money, and also upon securing the delivery to such officer of at least twenty per cent of the property subscribed to the aggregate amount of the capital stock, the board of corporators, or a majority of them, shall certify to the Secretary of State that all the requirements of law have been complied with. This certificate is known as the "return of the corporators." Upon the filing of the return and the receipt of the charter fee, and upon payment of all filing fees, the Secretary of State issues to the board of corporators a certificate known as a charter. Thereupon a copy of the charter must be recorded in the office of the register of conveyances or clerk of each county wherein the corporation shall have a business office. In cases where, by the terms of the declaration, the capital stock of the corporation is to be paid in instalments, the treasurer may issue stock when fifty per cent of the first instalment of the capital stock has been paid in, and the provisions of the act have in other respects been complied with. Collateral inquiry into validity of corporate existence is forbidden (chap. 48, secs. 1880, 1885).

6. **Corporate Indebtedness.** — There is no statutory limitation upon the amount of corporate indebtedness.

7. **Organization Tax.** — On capital stock not exceeding \$100,000, one mill on each dollar, but never less than \$5 on any authorized capital; over \$100,000, and not exceeding \$1,000,000, one-half mill on each dollar in addition to the \$100 tax on the first \$100,000; exceeding \$1,000,000, one-fourth of a mill on each one dollar exceeding \$1,000,000 (chap. 48, secs. 1888, 1889; Laws of 1904, chap. 245; Laws of 1905, chap. 437).

*P. M. Co. v. Gantt*, 68 S. C. 199; 46 S. E. 1005.

8. **Filing and Recording Fees.** — To the Secretary of State for recording declaration, \$2.50; for recording return, \$2.50; for each certificate under seal of State, \$1.07; for certified copy of the charter, \$1.07 for attaching certificate and 10 cents per folio of one hundred words for making copy. For recording amendments, \$5; for filing papers of foreign corporations necessary to secure permit to do business within the State, \$15. For recording articles in local county office, \$2.

9. **Commencing Business.** — (See also *ante*, "Procuring Charter.") The corporation must organize and commence business within two years from the

date of its incorporation or the date of the commission appointing the board of corporators (chap. 47, sec. 1850).

10. **Organization Meeting.** — The organization meeting must be held within the State, in the absence of any statute providing otherwise (see chap. 47, sec. 1846).

11. **Meetings of Stockholders and Directors.** — At least one meeting of the stockholders shall be held annually within the State. Directors' meetings may be held at such place as the by-laws may provide (chap. 47, sec. 1846).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There may be any number of directors not exceeding nine. There are no residential requirements (chap. 48, sec. 1883).

*b. Liabilities.* — Directors are liable for making false representations as to resources and for misrepresentations in certificates (chap. 48, sec. 1843).

13. **Stockholders' Liabilities.** — Stockholders are liable to creditors only to the extent of their unpaid stock subscriptions (Cons., Art. IX, sec. 18). Under chap. 418 of the Laws of 1905, the liability of the stockholders is expressly limited to the amount remaining due to the corporation on the stock owned by them.

*M. C. Mills v. Springs*, 56 S. C. 534; 35 S. E. 222; *Lauraglen Mills v. Ruff*, 57 S. C. 53; 35 S. E. 387; *Williams v. Benet*, 34 S. C. 112; 13 S. E. 97.

14. **Stock Certificates.** — Each stockholder is entitled to a certificate under the seal of the corporation signed by the secretary or treasurer (chap. 47, sec. 1847, as amended by Laws of 1905, chap. 436).

15. **Preferred Stock.** — There is express provision for the issuance of preferred stock (chap. 47, sec. 1856).

16. **Payment of Capital Stock.** — Stock can be issued only for labor done, or money or property actually received (chap. 47, sec. 1855; chap. 48, sec. 1882). Unless the charter provides that stock may be paid in instalments, it cannot be issued until fully paid (chap. 48, sec. 1894). No subscriptions in labor or property can be received unless the same and value thereof is approved by the board of corporators (chap. 48, sec. 1882).

17. **Books.** — Books are required to be kept open to inspection of stockholders, and it may be inferred from the statute that they must be kept in the State (chap. 48, sec. 1897).

18. **Office and Agent.** — There are no express requirements as to having a principal office or place for the transaction of business within the State, but by construction it is necessary to maintain a domiciliary office. (See *Cromwell v. Ins. Co.*, 2 Rich. Law, 512.)

19. **Reports.** — All corporations, both domestic and foreign, shall annually during the month of February of each year file with the Comptroller-General a statement containing, (1) the name of the company; (2) location of principal office; (3) name and post-office addresses of the president, secretary, treasurer, superintendent, and general manager, and the members of the board of directors; (4) date of annual election of officers; (5) amount of authorized capital stock and par value of each share; (6) amount of capital stock subscribed, issued, and outstanding, and the amount of capital stock paid up; (7) the nature of the business and location thereof (Laws of 1905, chap. 407).

20. **Anti-Trust Statute.** — There is an anti-trust statute in force in South Carolina. (See C. C., 1902, secs. 2845, 2847.)

**21. Statutory Grounds for Forfeiture of Charter.** — Charter may be forfeited for non-user for five years, or for non-payment of taxes, or for non-payment of annual franchise tax, or for violation of anti-trust statute (chap. 48, sec. 1898; chap. 47, sec. 1865; see also C. C., 1902, secs. 308, 2845, 2847). It may also be forfeited for failure to organize and commence business within two years from incorporation (chap. 47, sec. 1850).

**22. Amendments.** — Any corporation may increase or decrease its capital stock in the manner following: whenever by resolution of the board of directors an increase of the capital stock of the corporation is determined upon a meeting of the stockholders shall be called to consider such resolution by notice published at least once a week for four successive weeks previous to the date fixed in such notice for same in some newspaper published in the county where the corporation has its principal place of business, which notice shall state the time and place of the meeting, the purpose for which it is called, and the maximum amount to which it is proposed the capital stock shall be increased. The vote of two-thirds of the stock of the corporation shall be necessary to make an increase, which increase may be so made to any amount not exceeding the maximum amount stated in such notice of the meeting of stockholders. The board of directors shall certify the resolution of the stockholders to the Secretary of State, and that all the requirements of this section as to said increase of capital stock have been complied with. In case the corporation increasing its capital stock is incorporated under the general law the board of directors shall likewise return to the Secretary of State the original charter or certificate of incorporation for the indorsements herein mentioned. The Secretary of State shall thereupon record the said certificate of the board of directors, and shall likewise endorse upon the charter or certificate of incorporation a certificate of the increase of the capital stock, and shall forthwith return the charter or certificate of incorporation with such endorsement thereon to the board of directors, and in cases where the law under which such corporation is created or organized requires the charter or certificate of incorporation to be recorded in the office of the register of mesne conveyances and clerk of court, a certificate of such increase of the capital stock endorsed by the Secretary of State. On the charter or certificate of incorporation as hereinbefore required shall be recorded across the face of the record of the charter or certificate of incorporation in the office of the register of mesne conveyances or clerk of court where the charter or certificate of incorporation is required to be recorded, such increase of the capital stock of such corporation as shall be authorized when the certificate is lodged for record in said office.

In cases where the capital stock is increased as by this section provided, the stockholder or stockholders thereof registered in the books of such corporation at the time when said increase of stock was authorized shall have the preference of taking such increase of stock in proportion to the amount of stock he, she, or they may own; but if such stockholder or stockholders shall not avail himself, herself, or themselves of such privilege within ten days after the lodgment for record of such certificate to increase their capital stock, the board of directors may dispose of the said increased capital stock as they may deem best at its market value in money or property (Laws of 1904, chap. 248).

**23. Extension of Corporate Existence.** — Provision is made for extension of corporate existence. (See chap. 47, sec. 1874; chap. 48, sec. 1891.)

**24. Dissolution.** — Corporate powers cease if organization is not com-

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pleted and business commenced within two years, and court of common pleas may dissolve any company for non-user. May also dissolve voluntarily by resolution of stockholders representing a majority of capital stock (chap. 47, secs. 1866, 1873; Laws of 1902, Act No. 586; see Code of Civil Procedure, 1902, sec. 265; Laws of 1904, chap. 269).

25. **Annual License Fee.** — Under the franchise tax of 1903, which did not go into effect until April 1, 1904, all business corporations except those of a quasi-public nature, must pay to the State Treasurer on or before April 1 of each year an annual license fee of one-half mill upon every dollar paid in upon the capital stock, and not less than \$5 in any case (Laws of 1904, chap. 269; Laws of 1905, chap. 407).

26. **Foreign Corporations.** — Foreign corporations must file with the Secretary of State a declaration designating principal place of business in the State and the name of agent to receive service of process, and must also file in same office a copy of the charter and by-laws with amendments. Must also file annual statement showing residence of corporation, amount of capital stock actually paid, names of officers and board of directors with their residence, etc. They are required to pay a fee of one-half mill on each dollar of property owned by them within the State (C. C., 1902, secs. 1779, 1795, 2360; Laws of 1904, chaps. 247, 269; Laws of 1905, chap. 407).

Central R. R., etc. Co. v. Company, 32 S. C. 319; 11 S. E. 192; Cone, etc. Co. v. Poole, 41 S. C. 70; 19 S. E. 203; Hollingsworth v. Sou. R. R. Co., 86 Fed. 353; State v. Company (S. C.), 51 S. E. 455.

## SOUTH DAKOTA.

(The references cited below are to the Revised Civil Code of 1903, and to the Compiled Laws of 1887, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of South Dakota is to be found in Revised Civil Code of 1903, secs. 396-479 (Compiled Laws of 1887, secs. 2889-2971). Those relating to mining, manufacturing, and other industrial corporations are secs. 780-797, Revised Civil Code, 1903 (Compiled Laws, 1887, secs. 3108-3125). The provisions relating to amendment of charters are found in chap. 106, Session Laws of 1903. As to the extension of corporate existence, see chap. 105, Session Laws of 1903. Under this act corporations may be formed for any lawful purpose. Special acts are, however, provided for incorporation of railway, street railway, wagon road, irrigation, insurance, loan, trust, mortgage, and for banks of discount. Laws of 1905, chap. 74, provides for organization of trust companies.

2. **Incorporators.** — Three or more, one-third of whom must be residents of the State (R. C. C., sec. 407; C. L., sec. 2900).

Singer Mfg. Co. v. Peck, 9 S. D. 29; 67 N. W. 947.

3. **Contents of the Certificate of Incorporation.** — The certificate must set forth:

a. *Name.* — The Secretary of State will not permit the use of another name already in use by a domestic corporation.

b. *Purposes.* — The purpose for which it is formed. The Secretary of State allows the insertion of any number of purposes not covered by special acts.

Vokes v. Eaton (Ky.), 85 S. W. 174.

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*c. Domicile.* — Place where the principal business of the corporation is to be transacted.

*d. Duration.* — Not to exceed twenty years.

*e. Directors.* — Number and names and residences of those who are to serve until the election of their successors, and qualifications must also be set forth.

*f. Capital Stock.* — Amount and number of shares into which same is divided. There is no limit to the amount of capital stock. The par value of shares may be any amount (R. C. C., sec. 408; C. L., sec. 2902).

**4. Statutory Powers.** — In addition to the statutory enumeration of common law powers the act provides for voting by proxy at elections of directors, for cumulative voting, for forfeiture of shares for non-payment of subscriptions, for having a business office without the State but within the United States, and for holding therein any meeting of the stockholders or directors; for removal of directors; for extension of corporate existence; for purchase of the corporation's own stock; for issuing stock in exchange for property or services (R. C. C., sec. 427; C. L., sec. 2199; R. C. C., sec. 429; C. L., sec. 2921; Cons., Art. XVII, sec. 5; R. C. C., secs. 453-469 inclusive; R. C. C., sec. 786; C. L., sec. 3114; R. C. C., sec. 438; C. L., sec. 2930; R. C. C., sec. 439; C. L., sec. 2931; Laws of 1903, chap. 105; R. C. C., sec. 425; C. L., sec. 2917; R. C. C., sec. 422; C. L., 2914; R. C. C., sec. 464; C. L., sec. 2956; Cons., Art. XVII, sec. 8).

*Summers v. Company*, 86 N. W. 749; *Magowan v. Greneweg* (S. D.), 91 N. W. 335; 86 N. W. 626.

**5. Procuring the Charter.** — The certificate must be signed and acknowledged by the incorporators before the same can be filed and charter issued. Two of the incorporators must take oath that the corporation is not formed for the purpose of enabling it to avoid the purposes of the South Dakota Anti-Trust Act, and upon the filing and recording of the certificate in his office, the Secretary of State issues a certificate of due incorporation (R. C. C., secs. 410, 411; C. L., secs. 2904, 2905; Revised Penal Code, sec. 781).

*Mason v. Stevens et al.* (S. D.), 92 N. W. 424; *B. & L. Ass'n v. Chamberlain*, 4 S. D. 271; 56 N. W. 897; *Thomas v. Wilcox* (S. D.), 110 N. W. 1072.

**6. Corporate Indebtedness.** — Debts cannot be contracted beyond the amount of stock subscribed (R. C. C., sec. 436; C. L., sec. 2928).

**7. Organization Tax.** — Where authorized capital stock is \$25,000 or less, the organization tax is \$10; where it does not exceed \$100,000, \$15; where it does not exceed \$500,000, \$20; where it does not exceed \$1,000,000, \$25; over \$1,000,000, \$40 (Laws of 1903, chap. 141, sec. 1).

**8. Filing and Recording Fees.** — Where copy of charter is prepared, the charge for certified copy of the articles of incorporation is \$1 (Laws of 1903, chap. 141, sec. 4). For any excess of one thousand words in articles, a recording fee of 10 cents per folio of one hundred words is charged.

**9. Commencing Business.** — Unless the corporation organizes and commences the transaction of business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. Every corporation shall within one month after filing articles of incorporation adopt a code of by-laws for its government, but no penalty or forfeiture is declared in case of non-compliance with this provision, and it is regarded as directory only (R. C. C., sec. 411; C. L., sec. 2905). No collateral inquiry into corporate existence is permitted (R. C., sec. 399; C. L., sec. 2892).



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10. **Organization Meeting.** — The organization meeting may be held at the principal office of the corporation without the State if provision is made therefor in the articles, otherwise it must be held within the State (R. C. C., sec. 786; C. L., sec. 3114; R. C. C., sec. 440; C. L., sec. 2932).

11. **Meetings of Stockholders and Directors.** — Incorporators', stockholders', and directors' meetings must be held at the office or principal place of business of the company. All meetings of stockholders and directors of mining, manufacturing, and other industrial corporations may be held at the outside office named in the articles of incorporation; and this may be provided for in the articles; and the articles may be amended to change the location of the outside office. The mode of calling meetings is as provided in the by-laws. The domiciliary office is kept at the place in the State named in the articles as the principal place of business. The original books and records may be kept at the outside business office if there be one (R. C. C., sec. 786; C. L., sec. 3114; see also R. C. C., sec. 440; C. L., sec. 2932).

*Wright v. Lee*, 4 S. D. 237; 55 N. W. 931; *In re Argus Printing Co.*, 1 N. D. 434 48 N. W. 347; *Troy Min. Co. v. White*, 10 S. D. 475; 74 N. W. 236.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — The statutes of South Dakota provide that one-third of the officers of all business corporations shall be residents of the State. The bar of the State generally regards this provision as being applicable only to the executive heads of the corporation, such as president, vice-president, secretary, and treasurer. The Secretary of State, however, in the absence of any judicial decision on the subject of a controlling nature, and in order to protect himself, requires that one-third of the first board of directors shall be residents of the State. They are elected annually by a majority vote of stockholders. The board must be composed of at least three and not more than eleven members. Directors must be stockholders to an amount to be fixed by the by-laws (R. C. C., sec. 434; C. L., sec. 2926).

*Magowan v. Greneweg* (S. D.), 86 N. W. 626; 91 N. W. 335.

*b. Liabilities.* — Directors are liable for the illegal declaration of dividends, or for the unlawful withdrawal of capital, or for any violation of law applying to corporations whereby the latter become insolvent. Directors assenting to such violation are jointly and severally liable for all debts contracted after such violation (R. C. C., sec. 436; C. L., sec. 2928; R. C. C., sec. 787; C. L., sec. 3115).

13. **Stockholders' Liabilities.** — Stockholders are liable to the amount of their unpaid stock subscriptions (R. C. C., sec. 431; C. L., sec. 2933). They are also liable for labor claims (R. C. C., sec. 783; C. L., sec. 3111; as to constitutionality of this statute, see cases cited below).

*S. B. T. M. Co. v. Company*, 4 S. D. 173; 56 N. W. 98; *Busby v. Riley et al.*, 6 S. D. 401; 61 N. W. 164; *Singer Mfg. Co. v. Peck*, 9 S. D. 29; 67 N. W. 947; *R. O. T. Co. v. Wellman*, 10 S. D. 122; 72 N. W. 89.

14. **Stock Certificates.** — Each stockholder is entitled to a certificate signed by the president and secretary (R. C. C., sec. 423; C. L., sec. 2915).

15. **Preferred Stock.** — There is no express provision of law authorizing the issuance of preferred stock. The Secretary of State, however, permits the insertion of provisions in the articles authorizing the issuance of preferred stock.

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**16. Payment of Capital Stock.** — Stock may be issued in exchange for money, labor done, or money or property actually received (Cons., Art. XVII. sec. 8). The act provides that the directors named in the articles of incorporation must proceed to open books of subscription to the capital stock unsubscribed and to secure subscriptions to the full amount of the fixed capital (R. C. C., sec. 421; C. L., sec. 2913).

*Hennesy v. Griggs et al.*, 1 N. D. 52; 44 N. W. 1010; *C. H. S. Co. v. Ferguson et al.*, 8 S. D. 534; 67 N. W. 615.

**17. Books.** — Every corporation must keep a journal of meetings of directors and stockholders. They must also keep a stock and transfer book, which with the journal is open to inspection of stockholders, directors, and creditors of the corporation, containing a record of all stock, the names of stockholders alphabetically arranged, instalments paid or unpaid, transfers, etc. Also a book of by-laws, to be open to inspection during office hours. The law does not provide, however, that any of these books shall be kept within the State, and provisions in the articles of incorporation for keeping them at the outside office are regularly allowed by the Secretary of State (R. C. C., sec. 423; C. L., sec. 2915; R. C. C., sec. 428; C. L. sec. 2920; R. C. C., sec. 445; C. L., sec. 2937; R. C. C., sec. 782; C. L., sec. 3110).

**18. Office.** — The law provides that every corporation having a business office out of the State must have its main office for the transaction of business within the State, to be set forth in the articles (R. C. C., sec. 786; C. L., sec. 3114).

**19. Reports.** — The statute provides that business corporations doing business within the State shall annually within twenty days from the first day of January make a report which must be published in some newspaper at or nearest to the place where the business of the corporation is carried on, which report must state the capital stock and the amount thereof actually paid in, the amount and nature of indebtedness, and the amount due the corporation, the number and amount of dividends, and when paid, and the net amount of profits. Such report must be signed by the president and a majority of directors, and be verified by oath of the president or secretary, and filed in the office of register of deeds of county where the business of the corporation is carried on. The only penalty provided for failure to comply with the statute is that a person who wilfully neglects or refuses to make, sign, or publish such report shall be guilty of misdemeanor (R. C. C., sec. 784; C. L., sec. 3112).

**20. Anti-Trust Statute.** — There is a somewhat drastic anti-trust statute in force in South Dakota (Revised Penal Code, 1903, secs. 770 to 781 inclusive).

**21. Statutory Grounds for Forfeiture of Charter.** — Unless the corporation is organized and commenced business within two years after incorporation, the corporate powers cease. Charters may also be forfeited by the State on any of the following grounds: For violating any of the laws creating, altering, or renewing corporations; by violating any express provisions of the law whereby the corporation shall have forfeited its charter by abuse of its powers; by failure to exercise its powers; whenever it shall have done or omitted to do any act which amounts to a surrender of its corporate rights; for exercising franchises or privileges not conferred upon it by law (R. C. C., sec. 447; C. L., sec. 2939; R. C. C., sec. 571; C. L., sec. 5346).

**22. Amendments.** — Articles may be amended so as to modify or enlarge corporate business or purposes, change number of directors, change name or

location of its business within the State or without the State, increase or decrease the capital stock, or in any other respect by vote of two-thirds of all outstanding stock at any regular or special meeting called for that purpose after thirty days' notice (sixty days for increase of stock) given to each stockholder stating nature of proposed amendment. After notice of proposed amendment is served upon stockholders, time may be waived by all of them, and amendment can be adopted immediately. Capital stock cannot be diminished to an amount less than indebtedness of corporation or estimated cost of works which it may be the purpose of the corporation to construct. After amendment is adopted, the president and secretary of the corporation shall prepare in duplicate a certificate setting forth amendment, stating number of votes cast therefor, and total number of shares of stock subscribed and outstanding, and that legal notice was given. One of these certificates must be filed with the Secretary of State, and the other with the secretary of the corporation. The signature of president and secretary to such certificate must be acknowledged before some officer authorized to take acknowledgments, who knows the parties signing the same to be the president and secretary of the corporation, and when such certificate is filed with the Secretary of State he shall issue a certificate of amendment, setting forth in what particular the original articles of incorporation have been amended (Laws of 1903, chap. 106, secs. 1-7 inclusive).

23. **Extension of Corporate Existence.** — Corporate existence may be extended for a further period of twenty years if desired (Laws of 1903, chap. 105).

24. **Dissolution.** — Voluntary dissolution is effected by application to the circuit court of the county where the corporation's principal place of business is situated, upon verified petition of a majority of the board of directors, the proceedings being simple and brief. Involuntary dissolution is effected under code of civil procedure by action in the name of the State, on leave of the circuit court or judge (R. C. C., sec. 446; C. L., sec. 2988).

25. **Annual License Fee.** — There is no annual license fee.

26. **Foreign Corporations.** — Before any foreign corporation can transact business within the State, or acquire, hold, and dispose of property within the State, or sue in the courts therein, it must file in the office of the Secretary of State a duly authenticated copy of its charter or articles of incorporation, and shall also appoint an agent within the State upon whom process may be had. A duly authenticated copy of the appointment of such agent or officer must be filed and recorded in the office of the Secretary of State, and register of deeds of the county where said agent resides (R. C. C., sec. 883; C. L., sec. 3190).

*Wright v. Lee et al.*, 4 S. D. 237; 55 N. W. 931; *Acme Mer. Agency v. Rochford*, 10 S. D. 203; 72 N. W. 466; *Foster v. Company*, 5 S. D. 27; 58 N. W. 9; *Peck Mfg. Co. v. Groves*, 6 S. D. 504; 62 N. W. 109; *F. & J. Co. v. Foster*, 4 Dak. 329; *Nat. Bank v. Corkings*, 9 S. D. 614; 70 N. W. 1059.

## TENNESSEE.

(The references cited below are to the Code of 1884, unless otherwise stated.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Tennessee is based upon the Act of March 19, 1875 (Session Laws of 1875, chap. 142). The law is peculiar in that it

specifically prescribes for what purposes companies may be incorporated, and sets forth the form of charter for each. The above "Charter Act" has been amended from time to time until now it is possible to incorporate in Tennessee under said act for all ordinary business purposes (Laws of 1903, chap. 474; Laws of 1905, chap. 174).

2. **Incorporators.** — Not less than five, except for brewery corporations, where only three incorporators are required. There are no residential requirements (sec. 1692; Laws of 1903, chap. 474).

3. **Contents of the Certificate of Incorporation.** — The forms for drawing charters are set out at length in the statutes, and vary according to the purposes sought to be obtained by incorporation. Speaking generally, all the forms set forth: First, name of the corporation, which the Secretary of State requires shall be different from that of any existing corporation. Second, the purposes must be set forth, and the incorporators are limited strictly to purposes included in one class. Third, the amount of capital stock, with the amount and par value thereof. If preferred stock is to be issued, provision should be made therefor as provided by law. The charter must state whether it is to be redeemed at not less than par, and if so the time and price thereof (Laws of 1905, chap. 174). The amount of capital stock is unlimited, except in the case of brewery companies, which latter must be capitalized for not less than \$5,000, and not more than \$500,000. Fourth, an enumeration of the general powers of the corporation, which are in substance merely an enumeration of common law powers. The statutory form also contains a large number of provisions for the regulation of the internal affairs of the corporation. It also provides that the first board of directors shall consist of the incorporators named in the charter of incorporation (secs. 1692, 1852; Act of April 30, 1897; Laws of 1899, chaps. 17, 224, 300, 304; Laws of 1903, chap. 474). Duration may be unlimited if desired.

4. **Statutory Powers.** — The statute enumerates the common law powers of corporations, and in addition thereto grants the following powers: For the purpose of repairs, rebuilding, or to meet contingencies, or for the purpose of a sinking fund, corporations may establish a fund of which they may loan, and in relation to which they may take proper securities. Mining companies are authorized to subscribe for stock in a railway corporation whose line of road is contiguous to their works. Manufacturing corporations are given power to locate, on their own lands, elevators, hoisting, warehouses, transfer trucks, etc. They are also given power to purchase, use, or dispose of patent rights. All corporations are given power to vote by proxy and to consolidate with other corporations engaged in the same general business. Also to sell in its entirety all the assets of the corporation to any corporation engaged in the same general line of business (see references cited at end of sec. 3; also secs. 1704, 1709-1711 a, 1853, 1860-1862, 1864, 1866-1868, 1872; Act of March 28, 1887; Laws of 1903, chap. 486). Also to issue preferred stock (Laws of 1905, chap. 174).

5. **Procuring the Charter.** — Incorporators must subscribe and acknowledge the execution of the charter, which is in fact a petition for incorporation. This instrument when so acknowledged must be registered in the county where the principal office of the company is situated, and also in the office of the Secretary of State. The latter officer issues a certificate of registration which in turn must be registered in the register's office of the county where the principal business office of the company is situated. Thereupon the formation of the corporation is completed (secs. 1692, 1694). Col-

lateral inquiry into the legality of corporate existence is forbidden (secs. 1693, 1712; Laws of 1903, chap. 474).

*Shields v. Clifton Co.*, 94 Tenn. 123; 28 S. W. 668.

**6. Corporate Indebtedness.** — Corporations are limited in the creation of debts to the amount of the authorized capital stock (sec. 1858; Laws of 1903, chap. 474).

**7. Organization Tax.** — For business corporations a tax of one-tenth of one per cent on the authorized capital stock is exacted. There is also a registration tax of \$10 (Act of June 17, 1895; Laws of 1897, chap. 32; Laws of 1899, chap. 432).

**8. Filing and Recording Fees.** — In addition to the payment of the organization tax, the Secretary of State is entitled to a fee of \$10 for registering the company. In lieu of issuing a certificate of incorporation, the Secretary of State attaches his certificate of registration to the papers recorded in his office and returns them to the incorporators. For issuing certified copy of the articles of incorporation, his fee is \$10. The fee for recording in the local county register's office is \$3.

**9. Commencing Business.** — Business may be commenced as soon as the charter is registered as required by law and the organization completed. If the corporation establishes agencies in any other county, the charter must be recorded there (sec. 1694).

**10. Organization Meeting.** — The organization meeting must be held within the State in the absence of any statute providing otherwise. The incorporators act as the first board of directors.

**11. Meetings of Stockholders and Directors.** — Annual stockholders' meetings must be held within the State. Directors' meetings may be held without the State if the by-laws so provide (secs. 1706, 1863).

*Synnott v. Association*, 117 Fed. 379; 54 C. C. A. 553.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be, except in the case of brewery companies, where there may be three, at least five directors. There are no residential requirements (secs. 1702, 1706; Laws of 1903, chap. 474).

*b. Liabilities.* — Directors are liable for illegal declaration of dividends, or for authorizing the creation of any indebtedness in excess of the capital stock paid in. Directors are liable for loans to stockholders in mining corporations, quarrying, boring, or manufacturing companies. They are also liable for intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their liabilities (secs. 1716, 1717, 1856-1858, 1859; Laws of 1897, chap. 49; Laws of 1903, chap. 474).

*Allison v. Coal Co.*, 87 Tenn. 60; 9 S. W. 226.

**13. Stockholders' Liabilities.** — Stockholders are liable for the amount of their unpaid stock subscriptions. They are also jointly and severally liable for moneys due or owing to the laborers, servants, clerks, or operators of the company in case the corporation becomes insolvent (secs. 1708, 1858; Laws of 1903, chap. 474).

**14. Stock Certificates.** — The par value of stock certificates may be \$100 or less (sec. 2052). Each shareholder is entitled to a certificate showing the number of shares held by him, signed by such officers as the by-laws may prescribe.

**15. Preferred Stock.**— Capital stock may be divided into common and preferred stock, provided it shall be stated in the charter of incorporation together with the respective amounts of each, and provided the preferred stock does not exceed two-thirds of the total authorized capital stock, and provided further that the capital stock shall be issued only for cash. It must be stated in the charter of incorporation whether the preferred stock is subject to redemption at not less than par, and, if so, the time and price of such redemption. Preferred stockholders are entitled to receive a fixed yearly dividend not exceeding ten per cent payable annually or semi-annually before any dividend can be paid on the common stock, and such dividend may be made cumulative. No preferred stock can be issued except by authority given to the board of directors by a vote of at least two-thirds of the common stock at a meeting duly called for that purpose, nor shall preferred stockholders have any voting powers except such as may be given by a two-thirds vote of the common stockholders. If there are more than two classes of stock, each share must have written or printed thereon the words "common stock" and "preferred stock."

**16. Payment of Capital Stock.**— In the case of mining, quarrying, boring, and manufacturing companies nothing but cash or land at a fair cash valuation can be accepted in payment of capital stock. Manufacturing companies are, however, authorized to receive an assignment of a patent in payment of stock subscribed to the amount of the value of such patent. The act specifically provides that the amount of any unpaid stock due from the subscriber to the corporation shall be a fund for the payment of any debts due from the corporation; the transfer of stock by any subscriber does not relieve him from payment unless his transferee has paid up all or any of the balance due on said original subscription (secs. 1708, 1856, 1872; Laws of 1903, chap. 474). Construction companies are authorized to receive stock and bonds in payment for their capital stock (Laws of 1905, chap. 479).

*Searight v. Payne*, 6 Lea, 283; *Kelley v. Fletcher*, 94 Tenn. 1; 28 S. W. 1099.

**17. Books.**— The act requires the keeping of books showing the list of stockholders, with their respective interests, the amount paid on shares subscribed, and all stock transfers by and to whom made (sec. 1707; Laws of 1903, chap. 474).

**18. Office and Agent.**— There are no express statutory provisions requiring the maintenance of an office and agent within the State. By implication, however, the company must maintain a domiciliary office within the State. (See sec. 1693.)

**19. Reports.**— By acts adopted previous to 1903 semi-annual statements are required of banks and trust companies and annual statements of building and loan companies, mining, quarrying, boring, and manufacturing companies. Annual statements are required of all corporations securing their charters under the Act of 1903 (Laws of 1903, chap. 474). The report must be published in a newspaper printed in the county where the principal office or business is located, showing the amount of capital stock, existing liabilities, and list of names of stockholders.

**20. Anti-Trust Statute.**— There is an anti-trust statute in force in Tennessee. (See Act of March 10, 1890; Act of March 30, 1891; Act of April 30, 1897; Laws of 1905, chap. 479.)

**21. Statutory Grounds for Forfeiture of Charter.**— Charters may be forfeited where the corporation has by neglect, non-user, abuse, or surrender,

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forfeited its corporate rights. Any act of the board of directors as a board constituting an express violation of the statute is declared to be a forfeiture of the charter (secs. 1718, 4162; see also sec. 2484; Code of 1896, sec. 6625).

**22. Amendments.** — Any corporation may change its name, increase its capital stock or obtain any powers granted by law, by the board of directors preparing a certificate and making application to the Secretary of State in these words.

"We, the undersigned, comprising the Board of Directors of — Corporation, apply to the State of Tennessee by virtue of the General Laws of the country for amendment to said charter of incorporation for the purpose of investing said corporation with the power (here state the clause in the general law aforesaid which is desired as an amendment, or if it be simply to change the name, so state the fact).

"Witness our hands this — day of —" (to be signed by the directors).

This instrument must be acknowledged, and a certificate of alteration given by the Secretary of State under the great seal of the State shall complete the amendment to such corporation. The amendment must be registered in all respects the same as the original charter. (Code of Tennessee, 1896, secs. 2028, 2029).

**23. Extension of Corporate Existence.** — Perpetual existence is open to incorporators if they desire it. There is no provision for the extension of corporate existence.

**24. Dissolution.** — The corporation may be dissolved on application to the courts. Directors are by statute made trustees for that purpose unless other persons are appointed by the court (secs. 1719–1723; Act of March 28, 1887).

**25. Annual License Tax.** — See secs. 6269, 6521 z; also Laws of 1901, chap. 174.

**26. Foreign Corporations.** — Foreign corporations must file with the Secretary of State a copy of charter, and have abstract thereof recorded in the register's office of each county in which they propose to do business or own land. Tax on the capital stock is as follows: \$100,000 and less, \$50; up to \$250,000, \$100; to \$500,000, \$150; to \$1,000,000, \$200; over \$1,000,000, \$250. If a foreign corporation locates its principal office and does all its business in and from Tennessee, and has all of its main property holdings in Tennessee, it must pay a privilege tax of one-tenth of one per cent on authorized capital stock. For filing charter of foreign corporation, the Secretary of State is entitled to a fee of \$20; for each abstract thereof, \$20 (secs. 2546, 2553; Laws of 1895, chap. 21; sec. 119, Laws of 1899, chap. 2; Laws of 1899, chaps. 14–31; Laws of 1903, chap. 239).

*State v. Schlitz Brewing Co.*, 104 Tenn. 715; 59 S. W. 1033; *L. P. Co. v. City of Nashville* (Tenn.), 84 S. W. 810; *N. & S. Co. v. Lloyd* (Tenn.), 76 S. W. 911; *State v. Company* (Tenn.), 86 S. W. 390.

## TEXAS.

(The references cited below are to the Revised Statutes, 1895, unless otherwise stated.)

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Texas is to be found in the Revised Statutes of 1895, secs. 610–670 inclusive, secs. 680–686, secs. 744–749 c, and the amendments of 1897, 1899, 1900, 1901, and 1903. Special acts are provided for railroad and insurance corporations. Under the General Act corpora-

tions are divided into some sixty-four different classes, covering almost all lines of business (secs. 642).

2. **Incorporators.** — Three or more persons. Two must be citizens of Texas (secs. 641, 644).

*Hamilton v. Company*, 15 Tex. App. 338; 39 S. W. 641.

3. **Contents of the Articles of Incorporation.** — The articles must set forth:

a. **Name.** — The Secretary of State will not permit the use of a name already in use by a domestic corporation.

b. **Purposes.** — Corporations are limited in their purposes to those named in some one of the sixty-four classes referred to, except in cases especially provided for otherwise. (See sec. 650 a.) The cases here referred to are as follows: Provided corporations may be formed for two or more of the purposes following: namely, the construction of bridges and maintenance of mills and gins; the manufacture and supply to the public of ice, gas, light, heat, water and electric motor for power or use in connection with such mills and gins or either; the harvesting of grain, or the harvesting and threshing of grain; provided that the authorized capital stock of all such corporations shall not exceed \$250,000. Corporations may also be created for two or more of the following purposes, namely: The supply of water to the public, the manufacture and supply of ice, electric light, and motor power, or either of them, to the public; and the manufacture, supply, and sale of carbonated water and the operation of cottonseed-oil mills, provided that all private corporations including one or more of the purposes mentioned in this article in their charter, shall each pay a franchise tax as provided by law for each of the purposes included in their respective charters, and provided further that the authorized capital stock of corporations authorized by this article shall not exceed \$200,000, and the provisions of the act shall not apply to cities of over ten thousand inhabitants (650 a and 650 b. See also Laws of 1905, chaps. 24, 53).

c. **Domiciliary Office.** — Place or places where the business is to be transacted

d. **Duration.** — Term for which it is to exist not to exceed fifty years. Where no period is limited the duration is twenty years.

e. **Directors.** — Number and names and residences of the board for the first year.

f. **Capital Stock.** — Amount thereof and number of shares into which it is divided (sec. 643). Both capital stock and par value thereof may be any amount (sec. 633).

4. **Statutory Powers.** — In addition to a statutory enumeration of common law powers of corporations, the following additional powers are granted: To vote by proxy, to forfeit stock for non-payment of assessments, to issue preferred stock, and to authorize directors to adopt by-laws (secs. 651-653, 668, 669).

5. **Procuring the Charter.** — The articles must be subscribed by all the incorporators and acknowledged by them. They are then filed in the office of the Secretary of State, at which time the organization tax must be paid. Corporate existence commences from the time the articles are filed in his office. The articles must be accompanied by an affidavit of one of its executive officers, to the effect that fifty per cent of its authorized capital stock has been subscribed for, and ten per cent paid in, or that at least \$100,000 of capital stock has been paid in in cash (secs. 644-646). Before



filing its articles of incorporation the corporation must pay not only the organization tax, but also pay the fractional part of its annual franchise tax, corresponding to the length of time before the next following first day of May.

**6. Corporate Indebtedness.** — Corporate indebtedness cannot be created in excess of the amount of the authorized capital stock (sec. 653).

**7. Organization Tax.** — For ordinary business corporations (exclusive of public service and eleemosynary corporations) the organization tax is \$25, provided that if the authorized capital stock of such corporation shall exceed \$10,000 it shall be required to pay an additional fee of \$5 for each additional ten thousand of its authorized capital stock or fractional part thereof after the first (sec. 2439). Before filing its articles of incorporation the corporation must pay not only the organization tax, but also pay the fractional part of its annual franchise tax, corresponding to the length of time before the next following first day of May (Laws of 1905, chaps. 19, 91).

**8. Filing and Recording Fees.** — The payment of the organization tax includes the filing and recording fees. The charge for certified copy of the articles of incorporation is 15 cents for each one hundred words and \$1 for certificate issued by the Secretary of State.

**9. Commencing Business.** — The smallest amount of paid up capital stock with which the corporation may begin business is ten per cent of its authorized capital, of which fifty per cent thereof must have been subscribed. In lieu of the foregoing, the corporation may furnish satisfactory evidence to the Secretary of State that at least \$100,000 of its authorized capital stock has been paid in in cash. Business must be commenced within three years after filing the charter, and in default thereof the corporation may be dissolved upon proper action brought by the State for that purpose (Laws of 1901, chap. 15).

**10. Organization Meeting.** — The organization meeting must be held within the State. The statute makes no provision for the organization of the corporation.

**11. Meetings of Stockholders and Directors.** — Meetings of stockholders may be held within the State at such time and place as the by-laws of the corporation may require. Directors' meetings may be held without the State if the by-laws so provide.

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three and not more than thirteen directors. There are no residential requirements (sec. 651, sub. 8).

*b. Liabilities.* — Directors are liable for knowingly declaring illegal dividends. The extent of their liability is, however, limited to the amount of such dividends (sec. 670).

**13. Stockholders' Liabilities.** — Stockholders are liable to the extent of their unpaid stock subscriptions (sec. 686).

*M. B. C. Co. v. Company*, 89 Texas, 511; 39 S. W. 1047; *Cole v. Adams*, 92 Texas, 171; 46 S. W. 790.

**14. Stock Certificates.** — Stockholders are entitled to certificates showing the number of shares owned by them, signed by such officers as the by-laws may prescribe.

**15. Preferred Stock.** — The right to issue preferred stock is only given in express terms to corporations organized for the purpose of storing, transporting, buying, and selling oil, gas, salt, brine, and other mineral solutions.

16. **Payment of Capital Stock.** — Stock may be issued in exchange for money, labor done, or property actually received (sec. 652).

17. **Books.** — A stock register, transfer book, and record of business transactions must be kept (statute does not provide where to be kept), and the books and records must be open to inspection of stockholders at all reasonable times. Execution creditors may demand names of, and amount of stock held by stockholders (secs. 662, 672).

18. **Office and Agent.** — An office must be kept in the State, and an agent therein upon whom process may be served (secs. 673, 1222, 1223).

19. **Reports.** — The directors shall, when required by one-third of the stockholders, make report showing amount of company's business, etc. No annual report is required (sec. 663).

20. **Anti-Trust Statute.** — There was formerly a drastic anti-trust statute in force in Texas, but it has been declared unconstitutional to the extent that it will not support actions by the State to recover penalties for a violation of the law, nor afford a defence to an action on a right originating in its violation. (See *State v. Shippers' and Compress Warehouse Co.*, 95 Texas, 603; 69 S. W. 58; see new act, Laws of 1903, chap. 94.)

*Crystal Ice & Mfg. Co. v. State*, 23 Texas Civ. App. 293; 56 S. W. 562.

21. **Statutory Grounds for Forfeiture of Charter.** — Charters may be forfeited for violation of the anti-trust act, or for acts of misuser or non-user, or for failing to organize and commence business within three years from date of incorporation. (See Laws of 1903, chap. 92.) Also for failure to pay annual franchise taxes (Laws of 1905, chap. 19).

22. **Amendments.** — Charters may be amended in any respect desired, except to so change the original purpose as to prevent the execution thereof, or to decrease the capital stock (secs. 647, 649, 651, 652). The act provides that the articles may be amended by filing copies of such amendments with the Secretary of State in the manner required in the case of original charters (sec. 647). The act unquestionably contemplates action by the stockholders at a meeting convened for that purpose in order to make the amendment effective. It also undoubtedly contemplates the making of a certificate by the president or other officer of the corporation, showing the manner in which the amendment was adopted. The act also provides that the number of directors may be increased or diminished to any number not less than three nor more than thirteen by a vote of the stockholders cast as the by-laws may provide.

To increase the capital stock to any amount not exceeding at any one time double the amount of its authorized capital requires the vote of the stockholders cast in conformity with the by-laws, and if a majority of the stockholders shall vote for the increase of such stock the same may be increased by the board of directors. Upon such increase of stock being made in accordance with the by-laws, the date and amount shall be certified to the Secretary of State by the directors, and from the time such certificate is filed the increase of stock shall become a part of the capital thereof. Such certificate shall be filed and recorded in the same manner as the original charter (sec. 652).

23. **Extension of Corporate Existence.** — There is no provision for the extension of corporate existence.

24. **Dissolution.** — The corporation may be dissolved by expiration of the charter, or by judgment of dissolution by a court of competent jurisdiction.

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Also through failure to commence business within three years from date of charter (secs. 680, 681).

**25. Annual Franchise Tax.** — All private domestic corporations must, on or before the first day of May of each year, pay to the Secretary of State the following franchise tax for the year following, to wit: \$1 on each \$2000 or fractional part thereof of authorized capital stock of the corporation up to and including \$100,000, and \$1 on each \$10,000 or fractional part thereof of such stock in excess of \$100,000 and up to and including \$1,000,000, and \$1 on each \$20,000 or fractional part thereof of such stock in excess of \$1,000,000 and up to and including \$10,000,000; and \$1 on each \$50,000 or fractional part thereof of such stock in excess of \$10,000,000, and such tax shall not be less than \$10 in any case (sec. 5243; Laws of 1905, chap. 19).

**26. Foreign Corporations.** — Foreign corporations must file with the Secretary of State a certified copy of their articles of incorporation, a permit to do business within the State being issued by said official upon payment of the following license fees. If the authorized capital stock be \$10,000 or less, the fee for permit shall be \$25; if the authorized capital stock exceeds \$10,000, the fee for permit shall be \$25 for the first \$10,000 of its authorized capital stock, and \$5 for each additional \$10,000 or fractional part thereof (sec. 2439). An annual license tax is also exacted in addition to the foregoing. Every foreign corporation must, on or before the first day of May of each year, pay to the Secretary of State a tax for the year following, to wit: \$1 on each \$1000 or fractional part thereof of the authorized capital stock of the corporation up to and including \$100,000; and \$1 for each \$5,000 or fractional part thereof of such stock in excess of \$100,000 and up to and including \$1,000,000; and \$1 for each \$20,000 or fractional part thereof of such stock in excess of \$1,000,000 and up to and including \$10,000,000; and \$1 on each \$50,000 of such stock in excess of \$10,000,000, but such tax shall not be less than \$25. Whenever a foreign corporation is authorized to do business in the State, it must pay the fractional part of such annual tax corresponding to the length of time before the next following first day of May (Laws of 1905, chaps. 19, 91.)

Lake View Land Co. v. Company, 95 Texas, 252; 66 S. W. 766; Security Co. v. Bank, 93 Tex. 575; 57 S. W. 22; Wilson v. Peace (Texas App.), 85 S. W. 31; De Witt v. Company, 81 S. W. 334.

## UTAH.

(The references below are to the Revised Statutes of Utah, 1898, unless otherwise stated.)

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Utah is to be found in the Revised Statutes of 1898 of that State, secs. 814–873, as amended by the Laws of 1899 and 1901. Under this act corporations may be formed for any purpose for which individuals may lawfully associate themselves. Special provisions are made for insurance, irrigation, trust, and railway companies.

**2. Incorporators.** — Five or more persons, one of whom must be a resident of the State (sec. 814; see also Laws of 1905, chap. 22).

**3. Contents of the Articles of Agreement.** — The articles must set forth:

*a. Name.* — No corporation can use the name of a corporation already organized within the State or of any foreign corporation duly authorized to transact business within the State (sec. 315, sub. 1; Laws of 1899, chap. 62; Laws of 1901, chap. 81; Laws of 1905, chap. 22).

*b. Domicile.* — The precinct or city where it is organized (Laws of 1905, chap. 22).

*c. Incorporators.* — The names of the incorporators and their places of residence (Id.).

*d. Duration.* — Not to be less than three nor more than one hundred years (Id.).

*e. Purposes.* — Pursuit or business agreed upon, specifying it in general terms. The Secretary of State permits the insertion of any number of objects in the articles not covered by special acts.

*f. Place of General Business.* — (Id.)

*g. Stock Subscriptions.* — The amount of each share and the limit of capital stock agreed upon. If the capital stock is to be divided into different kinds and classes, the rights and privileges of each class must be provided for, and the power of voting may be confined to such classes as the articles may designate. Unless otherwise provided, each shareholder is entitled to one vote for each share of stock owned by him or held in trust for others (Id. see also Laws of 1903, chap. 59).

*h. Officers and Directors.* — The number and kinds of officers, their qualifications, and the terms of office, and time and manner of their election, removal, and resignation, with the names of the officers who are to serve until the first general election, provided that in no case shall the number of directors be less than three nor more than twenty-five. Provision may be made also for classifying directors into three classes to hold office each for one, two, and three years respectively, one-third being elected annually (Id.).

*i. Quorum of Directors.* — How many of the entire board of directors shall be necessary to constitute a quorum to be authorized to transact the business and exercise the corporate powers of the corporation, provided that a quorum shall not be less than one-fourth of the entire number (Id.).

*j. Stockholders' Liabilities.* — Whether or not the private property of the stockholders shall be liable for its obligations (Id.).

*k. Provisions for the Regulation of Internal Affairs.* — Such general clauses as incorporators may deem necessary for conducting the business of the corporation for its future welfare (Id.). The law provides that articles of agreement shall also contain provisions as to the payment of stock subscriptions in property if it is desired to pay them in this manner. (See sec. 5, post, "Procuring the Charter.") Provision may also be made in the articles of incorporation designating what proportion of the outstanding capital stock shall be represented at a stockholders' meeting, and what proportion of the stock so represented shall be necessary to determine any question relative to the election of officers (sec. 316, as amended by Laws of 1901, chap. 81).

*4. Statutory Powers.* — In addition to statutory enumeration of common law powers corporations have the following additional powers: To authorize voting by proxy, to forfeit stock for non-payment of assessments, to consolidate with other corporations engaged in the same line of business in the same vicinity, to enforce a lien upon the stock of its members for debts due the corporation, to remove directors and to authorize directors to adopt by-laws, to dispose of the assets of the corporation when such power is inserted in the articles of agreement and is given to the board of directors (R. S., sec. 322; R. S., secs. 335, 356, 373; R. L., secs. 340, 341; R. S., sec. 333; R. L., secs. 327; 322, 327, 333, 335, 340, 341, 356, and 376; see also Laws of 1905, chap. 27; Laws of 1905, chaps. 108, 131).

*5. Procuring the Charter.* — The agreement must be subscribed by all of the

incorporators and sworn to and acknowledged by at least three of their number before the county clerk or any notary public of the county in which they have established or intend to establish their principal place of business (Laws of 1905, chap. 22). In addition to the foregoing three or more of the incorporators must make oath to the effect that they have commenced, or it is *bona fide* their intention to commence, carrying on the business mentioned in the agreement; that the affiants verily believe that each party to the agreement has paid, or is able to and will pay, the amount of the stock subscribed by him, provided that such affidavit shall not be made until not less than ten per cent of the stock subscribed and ten per cent of the capital stock of the corporation has been paid in, and provided also, where subscriptions to the capital stock shall consist in whole or in part of property necessary to the pursuit agreed upon, must appear in the articles of incorporation a description of the property so taken, with a statement of the fair cash value thereof, which statement, except in the case of corporations organized for mining or location purposes, shall be supplemented by the affidavit of three persons to the effect that they are acquainted with the said property, and that it is reasonably worth the amount in cash for which it was accepted by the corporation, and the owner of such property shall be deemed to have subscribed such amount to the capital stock of said corporation as will represent the fair cash value of so much of said property and of such interest therein as they may have conveyed to the corporation by deed actually executed and delivered (Laws of 1905, chap. 111).

As soon as the foregoing provisions are complied with and the officers named in the agreement have taken and subscribed the oath of office, the agreement, with the oaths of office and the affidavits attached thereto, must be filed and recorded in the office of the county clerk of the county in which the principal business is carried on within ten days from the date of execution thereof. The county clerk issues a certificate to the effect that the agreement and oaths of office have been filed in his office, which certificate, together with a copy of the agreement and oaths, must be filed in the office of the Secretary of State, and thereupon he issues a certificate that the above-mentioned instruments have been filed in his office (secs. 316 and 320, as amended by Laws of 1901, chap. 81).

*P. T. C. Co. v. Company*, 23 Utah 474; 65 Pac. 735.

**6. Corporate Indebtedness.**—The capital stock cannot be diminished to an amount less than fifty per cent in excess of the indebtedness of the corporation (Laws of 1905, chaps. 30, 31).

**7. Organization Tax.**—Twenty-five cents on each thousand dollars of the capital stock (Laws of 1897, chap. 1; Laws of 1901, chap. 60).

**8. Filing and Recording Fees.**—The payment of the organization tax includes the filing fees in the Secretary of State's office. The articles of agreement are not recorded. To the Secretary of State for issuing certificate of incorporation, \$5; for certified copy of articles of agreement, 15 cents per folio of one hundred words, and \$1 for certificate; for filing and issuing certificate of amendment, \$5; to the county clerk for filing and indexing articles of agreement, \$2.50; for recording the same, 20 cents per folio; for filing oath of officers, 50 cents each (Laws of 1901, chap. 60; Laws of 1905, chap. 73).

**9. Commencing Business.**—Business may be commenced as soon as the articles are filed as required by law, and ten per cent of the capital stock subscribed, and ten per cent of the authorized capital stock has been paid in, and

the officers have duly taken their oaths of office. Business must be commenced within the period of two years after the time of filing articles, to avoid forfeiture of charter (Laws of 1891, chap. 81, amending R. S., secs. 316, 321).

10. **Organization Meeting.** — The organization meeting must be held within the State; this in the absence of any statute expressly authorizing the holding of organization meetings without the State.

11. **Meetings of Stockholders and Directors.** — Meetings of stockholders and directors may be held at the time and place designated by the by-laws. (In the absence of any statute expressly authorizing the holding of stockholders' meetings without the State, it is safe to say that without the consent of all stockholders such meetings must be held within the State (R. L., secs. 334, 336).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three and not more than twenty-five directors, one-third of whom must be residents of the State. One-fourth of the entire number may constitute a quorum if the articles so provide. Directors must be stockholders. Special provision is made for their removal by the stockholders (R. S., secs. 324, 327; Laws of 1901, chap. 81).

*b. Liabilities.* — There is no civil statutory liability of directors. Criminal penalties are, however, provided for misconduct of directors (R. S., secs. 4411, 4422).

13. **Stockholders' Liabilities.** — Unless the articles of agreement otherwise provide, stockholders are only liable to the creditors to the extent of their unpaid stock subscriptions (R. S., sec. 331; see also Cons., Art. XII. sec. 18; see also R. S., secs. 338, 354).

*Richardson v. Company*, 23 Utah, 366; 65 Pac. 74; *Salt Lake Hardware Co. v. Company*, 13 Utah, 423; 45 Pac. 200; *Henderson v. Turngren*, 9 Utah, 432; 35 Pac. 495.

14. **Stock Certificates.** — Each shareholder is entitled to a certificate showing the number of shares owned by him, signed by such officers as the by-laws may prescribe.

15. **Preferred Stock.** — The issue of preferred stock is expressly authorized by statute (Laws of 1903, chap. 59).

16. **Payment of Capital Stock.** — Capital stock may be paid for in property, by providing therefor in the articles of agreement and describing such property therein (Laws of 1901, chap. 81, amending R. S., sec. 316; see also Cons., Art. XII. sec. 5; Laws of 1905, chap. 27).

17. **Books.** — Correct books of the proceedings and business of the corporation must be kept open for inspection by stockholders. The place where such books are to be kept is not regulated by statute (R. S., secs. 328, 329, 4415).

18. **Office and Agent.** — The Constitution provides that no corporation shall do business within the State without having one or more places of business within the State and an agent located thereat upon whom process may be served (Art. XII. sec. 9; see also R. S., sec. 4415).

19. **Reports.** — The statutes do not require reports to be made except for insurance, banking, loan, trust, and guaranty companies.

20. **Anti-Trust Statute.** — There is a moderate anti-trust statute in force in Utah (R. S., secs. 1752, 1762).

21. **Statutory Grounds for Forfeiture of Charter.** — Charter may be

forfeited for non-user for a period of two years consecutively, or for entering illegal pools or trusts (R. S., secs. 321, 1758).

*Jackson v. Company*, 21 Utah, 1; 59 Pac. 238.

**22. Amendments.** — Articles of incorporation may be amended in any respect desired, by conforming to the provisions of law in such case made and provided (sec. 338). To carry the amendment into effect requires the vote of a majority of the stockholders cast at a stockholders' meeting called for that purpose. The law provides that if all the stockholders vote in favor of such amendment notice thereof required by law, hereinafter referred to, need not be given, and provided further that the original purpose of the corporation shall not be altered or changed without the approval or consent of all the outstanding stock, and provided further that adding to the purposes or objects or extending the power and business of the corporation shall not be deemed to change the original purposes of the corporation (Laws of 1905, chap. 131). In the absence of unanimous consent on the part of the stockholders notice of the meeting must be given by the president or secretary of the corporation in some newspaper having general circulation in the county where the corporation has its principal place of business for at least twenty-one days, stating the nature of the proposed amendment and the time and place of said meeting. Such change or amendment when adopted shall be signed by the president and secretary of such corporation and be filed and recorded in the manner provided for the filing and recording of original articles (sec. 339; Laws of 1905, chap. 30).

**23. Extension of Corporate Existence.** — There is no provision for the extension of corporate existence.

**24. Dissolution.** — Voluntary dissolution may be had by application to the district court upon two-thirds vote of the stockholders at a special meeting of the stockholders (R. S., secs. 3114, 3661 *et seq.*).

**25. Annual License Fee.** — There is no annual license fee.

**26. Foreign Corporations.** — Foreign corporations must file with the Secretary of State and county clerk of the county where the principal office of the corporation is to be located a copy of their articles of incorporation and by-laws. The board of directors of such corporations must appoint some person residing within the county where the corporation's principal place of business is located to receive service of process upon the corporation. A similar resolution must be passed accepting in behalf of the corporation the provisions of the Constitution of the State of Utah. Foreign corporations pay the same fees to the Secretary of State as domestic corporations (secs. 351, 352). Under the Constitution, Art. XIII. sec. 6, no corporation organized outside of the State is permitted to transact business within the State on conditions more favorable than those prescribed by law to similar corporations organized under the laws of Utah.

*R. G. W. Ry. Co. v. Company*, 23 Utah, 22; 63 Pac. 995; *Hiskey v. Company*, 27 W. 409; 76 Pac. 20; *A. Booth & Co. v. Weigand (Utah)*, 79 Pac. 570.

## VERMONT.

(References below are to the Statutes of Vermont, 1894, unless otherwise stated.)

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Vermont is found in the Statutes of Ver-

mont, 1894, secs. 3673-3742 inclusive. Under it corporations may be formed for any lawful purpose excepting telephone, telegraph, banking, insurance, railway, construction and operation companies, savings banks, trust companies, and corporations intended to derive profit from the loan of money or real estate.

**2. Incorporators.**— Five or more persons. There are no residential requirements (sec. 3704).

**3. Contents of Articles of Association.**— The articles of association must contain:

*a. Name.*— Similarity of names with that of existing corporations forbidden (sec. 3705).

*b. Purposes.*— Object or objects for which established. Any number of purposes may be inserted in the articles (sec. 3705).

*c. Domicile.*— Place in which corporate business is to be carried on (sec. 3705).

*d. Capital Stock.*— Amount thereof. Capital stock is limited to a minimum of \$500 and a maximum of \$1,000,000. The par value of shares must not exceed \$100 (secs. 3705, 3728). Duration of corporate existence is unlimited.

**4. Statutory Powers.**— In addition to a statutory enumeration of common law powers, the following additional powers are granted: The right to vote by proxy at stockholders' meetings, to forfeit stock for failure to pay assessments, and to have a lien upon the stock of its members for debts due to the corporation (secs. 3691, 3718, 3727).

**5. Procuring the Charter.**— Articles must be subscribed by all the incorporators and then submitted to the Secretary of State for his approval. The latter may, if he sees fit, refer the same to a judge of the Supreme Court who is given power to determine whether the proposed corporation may or may not be organized under the General Act. If the articles are approved, they are recorded in the office of the Secretary of State, and a certified copy thereof must be recorded in the office of the clerk of the town in which the principal place of business of the corporation is located. The organization tax must be paid to the Secretary of State before corporate existence begins (secs. 3705-3707).

*Lawrie v. Silsby* (Vt.), 57 Atl. 1106.

**6. Corporate Indebtedness.**— One-fourth of the capital stock must be paid in before the corporation can contract debts. No debts can be contracted in any event exceeding in amount two-thirds of the capital stock actually paid in (sec. 3724).

**7. Organization Tax.**— Capital stock up to \$5,000, \$10; not exceeding \$10,000, \$25; not exceeding \$50,000, \$50; not exceeding \$200,000, \$100; not exceeding \$500,000, \$200; not exceeding \$1,000,000, \$300; exceeding \$1,000,000, \$500 (Laws of 1898, chap. 19, sec. 2; see also Laws of 1900, chap. 15).

**8. Filing and Recording Fees.**— The payment of the organization tax includes the filing and recording fees in the Secretary of State's office. The charge for issuing certified copy of articles of association is \$2. Recording fees in local town or city office, \$1; fee for filing certificate of payment of capital stock, \$1.

**9. Commencing Business.**— Before commencing business, also, the president or clerk must make a certificate under oath stating the amount of capital



actually paid in. This must be at least one-fourth of the capital stock, if debts are to be contracted. This certificate is filed in the office of the Secretary of State, and a certified copy thereof with the clerk of the town in which the principal place of business is to be located (secs. 8722, 8724).

10. **Organization Meeting.**— The organization meeting must be held within the State. The law provides how the same shall be called (secs. 8708–8710).

11. **Meetings of Stockholders and Directors.**— There is no statute authorizing the holding of stockholders' meetings without the State, and by implication at least they must be held there. Directors' meetings may be held within or without the State, as the by-laws may provide.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.*— There must be at least three directors, who must be stockholders, and two of them must be residents of the State (secs. 8677, 8717).

*Buck v. Company (Vt.), 56 Atl. 285.*

*b. Liabilities.*— Directors are liable if the corporation contracts debts before a copy of its articles of association and a certificate as to the amount of capital stock paid in are filed in the office of the clerk of the town in which the principal office of the corporation is to be located. They are also liable for illegal payment of dividends, or for permitting the creation of indebtedness in excess of two-thirds of the capital stock paid in (secs. 8722–8724).

*Farr v. Briggs Estate, 72 Vt. 225 ; 47 Atl. 793.*

13. **Stockholders' Liabilities.**— Stockholders are liable to the extent of their unpaid stock subscriptions. If the capital stock is withdrawn or refunded to the stockholders, before the full payment of its debts, each stockholder is personally liable to the amount thereof refunded to him (secs. 8725, 8726).

*Barton Nat. Bank v. Atkins, 72 Vt. 33 ; 47 Atl. 176 ; Corey v. Morrill, 61 Vt. 398 ; 17 Atl. 840.*

14. **Stock Certificates.**— Stockholders are entitled to a certificate signed by such officers as the by-laws prescribe.

15. **Preferred Stock.**— There is no provision expressly authorizing the issuance of preferred stock.

16. **Payment of Capital Stock.**— Stock can be issued only in exchange for money or money's worth.

17. **Books.**— Stock book must be kept within the State, containing the names of the holders of stock, their places of residence and number of shares held by each, amount actually paid in on each share, and time when they acquired the same (secs. 8683, 8714, 8733). All records, amounts, and papers of the corporation are open to the inspection of stockholders.

18. **Office and Agent.**— Must have an office within the State in charge of a clerk in the town where its principal place of business is located (secs. 8712, 8713).

19. **Reports.**— There is no statutory provision as to reports. There is a statute, however, requiring all moneyed corporations annually, on or before April 15th, to transmit to the clerk of each town in which stockholders of the corporation reside, a list of the stockholders with the amount of shares held by them and the amount paid thereon. They must also transmit to the clerk of the town where the corporation has its principal business a list of all stockholders, with the number of shares owned by them and the amount paid thereon (secs. 880–882; see Laws of 1904, chap. 29).

**20. Anti-Trust Statute.**—There is no anti-trust statute in force in Vermont.

**21. Statutory Grounds for Forfeiture of Charter.**—Charter may be forfeited for failure to pay license taxes (secs. 575, 578; Laws of 1902, chap. 20, sec. 56; Laws of 1904, chap. 92).

**22. Amendments.**—Articles may be amended for the purpose of increasing or decreasing capital stock, for the purpose of changing the corporate name, or place of domicile, or for the purpose of altering, adding to, or changing the business of the corporation. To increase the capital stock requires a meeting of the stockholders warned for the purpose. After the increase has been voted a certificate must be prepared and signed and sworn to by the president and clerk, stating the nature of the amendment. This must be filed and recorded with the Secretary of State, and a certified copy thereof returned and recorded in the town clerk's office in the same manner as the original articles of association.

To reduce the capital stock requires a meeting of the stockholders warned for that purpose, and action thereat had by two-thirds of its stockholders in amount. After such reduction a certificate thereof, signed and sworn to by the president and clerk, must be filed and recorded with the Secretary of State, and a certified copy thereof returned and recorded in the town clerk's office in the manner provided in the case of increase of capital stock. The name of the corporation may be changed by a two-thirds vote of the stockholders representing two-thirds of the capital stock cast at a meeting duly warned for that purpose. Thereafter a certificate signed by the clerk must be filed and recorded in the office of the Secretary of State, setting forth the name and the substance of the voting. A certified copy of such certificate must be recorded in the town clerk's office, where the certified copy of the original articles of association is required to be recorded.

The purposes of the corporation may be changed by a vote of all of the stockholders at a meeting duly called for that purpose. A certificate setting forth such change, signed and sworn to by the president and clerk of such corporation, must be filed and recorded with the Secretary of State, and certified copy thereof returned and recorded in the town clerk's office in the same manner as the original articles of association (Laws of 1904, chap. 91).

**23. Extension of Corporate Existence.**—Companies may be incorporated for an unlimited term. There is no provision for extension of corporate existence.

**24. Dissolution.**—On vote of the stockholders owning one-fourth of the capital stock a corporation may petition court of chancery for dissolution (secs. 3735, 3736; see also Laws of 1902, chap. 20, sec. 57).

**25. Annual License Fee.**—Capital stock to \$50,000, \$10; and for each \$50,000, or part thereof in excess of \$50,000, \$5, but no tax shall exceed \$50. Tax is payable in February, special exemption for manufacturing establishments (secs. 365, 575, 578; Laws of 1902, chap. 20, secs. 47-55; Laws of 1904, chap. 29).

**26. Foreign Corporations.**—Foreign corporations must file with the Secretary of State a copy of charter and statement setting forth the business of the corporation, location of office within the State, and an agent upon whom process may be made; and pay an annual license tax of \$10, if capitalization is \$50,000 or less, and for every \$50,000 or part thereof in excess of \$50,000, \$5, but in no case to exceed \$50 (R. S., secs. 575, 4165). The Secretary of

State will issue certificate showing compliance with the law and authorizing the corporation to do business within the State (Laws of 1902, chap. 20, secs. 47, 59-64).

*Osborne v. Ins. Co.*, 57 Vt. 278.

## VIRGINIA.

(The references cited are to the Business Corporation Act of 1903, found in Acts of Extra Session (1902-1904), chap. 270. This is in turn subdivided into five subsidiary chapters, to which reference is made below.)

1. **Statutes under which Business Corporations may incorporate.**—The Business Corporation Act of Virginia is to be found in the Laws of 1902-1904, pp. 437-484. Under it charters may be procured for any lawful business. (See also Laws of 1904, chap. 50.)

2. **Incorporators.**—Three or more. There are no residential requirements (chap. 1, sec. 1).

3. **Contents of the Articles of Incorporation.**—The contents must set forth:

a. *Name.*—Name must contain the word "corporation" or "incorporated," and must be such as to distinguish it from any other corporation engaged in a similar line of business (chap. 1, sec. 2).

b. *Domicile.*—Name of the county, city, or town where the principal office within the State is to be located (Id.).

c. *Purposes.*—Purposes for which it is formed. There may be any number not covered by special act (Id.).

d. *Capital Stock.*—Maximum and minimum amount of capital stock and number of shares. If preferred stock is desired, there must be inserted a description of the several classes of stock with the terms on which they are created (Id.).

e. *Duration.*—May be perpetual if desired (Id.).

f. *Officers and Directors.*—Names and residences of officers and directors for the first year (Id.). Directors may be classified, if desired (chap. 5, sec. 12).

g. *Real Estate.*—Limitation upon amount of holdings thereof (Id.).

h. *Regulation of Internal Affairs.*—Any provisions may be inserted for the conduct of the affairs of the corporation; also any provisions defining, limiting, or regulating the powers of the corporation to the directors or stockholders (Id.).

4. **Statutory Powers.**—In addition to a statutory enumeration of common law powers, the following additional powers are granted: To take real and personal estate by gift, devise, or bequest; to subscribe, guaranty, or become surety in respect to stock and bonds of other corporations; to conduct business in other States and Territories and foreign countries; to hold meetings of directors within or without the State; to have offices, to hold, purchase, mortgage, or convey real and personal property both within and without the State; to authorize voting by proxy in the election of directors; to classify directors; to permit the insertion in the articles of a provision delegating the power to adopt by-laws to the directors; to remove directors; to forfeit stock for non-payment of assessments; to issue preferred stock; to permit cumulative voting by inserting provision therefor in the articles; power to insert in the articles provision conferring upon the bondholders

right to vote in respect to corporate affairs, management, and consolidation with other corporations (chap. 5, secs. 2-8, 10, 12, 13, 16, 19, 40-42). The statute authorizes the directors to appoint an executive committee of two or more directors from their own number (chap. 1, sec. 13).

**5. Procuring the Charter.** — The certificate of incorporation must be subscribed by each of the incorporators, and is then presented to the judge of the circuit court of the county or to a judge of the corporation, circuit or chancery court of the city wherein the corporation is to be located, for his certificate to the effect that it is executed according to law. When so endorsed and when organization tax is paid, the certificate must be presented to the State corporation commission, which is authorized to pass upon the question whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter. If satisfied in this regard, the fact is certified by them to the Secretary of the Commonwealth, and the charter is recorded by him in the charter records. This done, the Secretary of the Commonwealth certifies the certificate to the clerk of the circuit court of the county or to the corporation court of the city wherein the principal office of the corporation is to be located, or to the clerk of the chancery court of the city of Richmond in case the principal office is to be located there. These officials are required to record the certificate in their offices and to endorse the fact of such recordation upon the certificate. Whereupon the said certificate with all endorsements thereon is returned by such last-named official to the clerk of the State corporation commission, and lodged with him. Corporate existence commences as soon as the certificate has been lodged for record in the office of the Secretary of the Commonwealth (chap. 1, sec. 8).

**6. Corporate Indebtedness.** — There is no statutory limitation upon the amount of corporate indebtedness. The statute expressly gives the right to a corporation to create a bonded indebtedness. If provision is so made in the articles of incorporation or by amendment thereto, voting powers in the corporation may be granted to bondholders (chap. 5, secs. 4, 29).

**7. Organization Tax.** — On capitalization of \$50,000, or less, \$10; over \$50,000, and less than \$1,000,000, 20 cents for each thousand dollars or fraction thereof; \$1,000,000 or more, \$800. (The foregoing schedule does not apply to transportation or transmission companies.)

**8. Filing and Recording Fees.** — The organization tax is payable to the Secretary of the Commonwealth. The following additional fees are charged: \$1, for application of the seal of the charter commission to the certificate, and 50 cents per page plus \$2, for recording the charter in the office of the Secretary of the Commonwealth. The registration fee as well as the franchise tax is payable annually on or before March 1st of each year. The annual franchise tax is payable to the order of the Treasurer of Virginia, and forwarded to the auditor of public accounts at Richmond. There is no charge for the approval of the local judge, or for obtaining his certificate to the effect that the certificate of incorporation is executed according to law. The State charter commission charges \$1 for certificate under seal that the applicants for a charter have complied with the requirements of law and are entitled to a charter. The Secretary of the Commonwealth makes no additional charge other than the charges referred to above for giving his certificate to the clerk of the circuit court, as to the filing in his office of the certificate of incorporation. The charges for filing and recording in the local office (*e. g.*, clerk of the State court) are the same as for the Secre-

tary of the Commonwealth given above. The State charter commission makes no charge for finally lodging the certificate of incorporation in their office. The Secretary of the Commonwealth charges \$1.50 for issuing certificate of incorporation. The cost of certified copy of the certificate of incorporation is 50 cents per page, 50 cents for certificate, plus \$1 for application of seal when required under seal. There are no charges made for filing and recording report as to officers, directors, etc. Under sec. 39, chap. 5, of the act concerning corporations, a report is required to be filed with the charter commission. Under sec. 14, chap. 1, of the same act a report is required to be filed with the clerk of the court. There is no charge as to the report under sec. 39, chap. 5, of the Corporation Act, but a charge of 25 cents to the clerk of the court for the report under sec. 14, chap. 1, is made. There is an additional charge of 50 cents per page where the certificate of incorporation exceeds two pages in length.

**9. Commencing Business.** — Business may be commenced as soon as the certificate has been recorded and approved as required by law, and as soon as the minimum capital stock as fixed by the certificate of incorporation has been subscribed. The corporation must commence business within two years from the time the charter is issued (chap. 1, sec. 3; chap. 5, sec. 1). Within thirty days after the first election of officers and directors a report authenticated by the signature of the president or one of the vice-presidents and the secretary of the corporation must be filed in the office of the State corporation commission, stating character of its business, corporate name, location, name of agent upon whom process may be served, amount of its authorized capital stock, amount actually issued and outstanding, names and addresses and terms of office of officers and directors and date of annual meeting (chap. 5, sec. 39; chap. 1, sec. 14).

**10. Organization Meeting.** — The organization meeting should properly be held within the State. The corporation must organize and commence business within two years after granting of the charter (chap. 1, sec. 4; chap. 5, sec. 51). Incorporators may assign their interests if desired (chap. 5, sec. 6).

**11. Meetings of Stockholders and Directors.** — The annual meeting of the stockholders must be held within the State. It would seem that special meetings should likewise be held within the State. Directors' meetings may be held within or without the State as the by-laws provide (chap. 5, sec. 7).

**12. Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors, including the president, who must be a director. The act provides for the appointment by the directors of an executive committee to manage the business of the corporation (chap. 1, sec. 13; chap. 5, sec. 10). Directors may be classified, if desired (chap. 5, sec. 12).

*b. Liabilities.* — Directors are jointly and severally liable for any damage resulting from their wilfully and fraudulently causing to be published or given out a report of the condition or business of the corporation known to them to be false in any material respect. To enforce this liability action must be brought within two years after the right of action accrues (chap. 5, secs. 26, 35). They are also liable for illegal declaration of dividends if they do not dissent therefrom (chap. 5, sec. 60).

**13. Stockholders' Liabilities.** — Stockholders are only liable for their unpaid stock subscriptions (chap. 5, sec. 9). No stock can be assigned on the books of the corporation without the consent of the corporation until all

dues and debts are paid thereon (chap. 5, sec. 57). If the stock is assigned before all stock subscriptions are paid thereon, the assignee is liable for any instalments which have accrued or which may thereafter accrue under the subscription agreement (Id.).

**14. Stock Certificates.** — Each stockholder is entitled to a certificate signed by the president or one of the vice-presidents and the treasurer, or by any two officers of the corporation thereto authorized by the board of directors (chap. 5, sec. 14).

**15. Preferred Stock.** — Preferred stock is expressly authorized by the act. Provision may be made for the issuance of the same, either in the original certificate or by subsequent amendment thereto. Preferred stock may be issued if desired, subject to redemption if desired three years after the issue thereof at a price not less than par. Dividends thereon may be made cumulative or non-cumulative as desired (chap. 1, sec. 2; chap. 5, sec. 13).

**16. Payment of Capital Stock.** — Stock may be issued for money, land or other property, real or personal, leases, options, mines, minerals, mineral rights, patent rights, rights of way, easements, contracts, labors, or services. The act provides that there shall be no individual liability on any subscriber beyond the obligation to comply with his contract of subscription. A corporation is expressly authorized to dispose of its stock for the purposes of its incorporation, at such prices and for such consideration and on such terms and conditions as it sees fit, provided, however, that the entire plan for the issuance of stock together with the valuations placed upon the property to be taken in exchange for stock shall be submitted to the State corporation commission before the issue is made. The act further provides that the judgment of the directors as to the value of the property taken in exchange for stock shall, in the absence of fraud in the transaction, be conclusive. For violating this provision a fine of \$1,000 may be imposed, and judgment entered therefor by the said corporation commission, which is given judicial powers for this purpose (chap. 5, sec. 9).

**17. Books.** — Transfer books must be kept (chap. 5, sec. 18).

**18. Office and Agent.** — Corporations must have a principal office within the State. In case the officers and directors are non-residents of the county, city, or town where the principal office is located, they must annually, by written power of attorney, appoint some practising attorney at law residing therein as its attorney or agent upon whom service of process may be made, who shall be authorized to enter an appearance in its behalf. This power of attorney must be recorded in the clerk's office of the circuit court of the county or the corporation or chancery court of the city wherein the principal office of the corporation is located. It must also be filed in the office of the Secretary of the Commonwealth (chap. 1, sec. 2; chap. 5, secs. 5, 39).

**19. Reports.** — Companies incorporated under the general laws must, within thirty days after the annual meeting, file in office of State corporation commission a report stating name of the corporation, location, character of business, authorized capital stock, amount issued and outstanding, names and addresses of officers and directors, date of next annual meeting. Every corporation must file with the State corporation commission by February 1st of each year report of the amount of its maximum capital stock. Every corporation shall also at the time of paying its annual registration fee make to the State corporation commission such report of its status, business, or condition as the State corporation commission shall require. Non-compliance with

these provisions subjects the corporation to a fine of not less than \$25 and not more than \$100 for each thirty days' default (chap. 5, sec. 39). Every corporation shall after the annual meeting of its stockholders certify to the clerk of the circuit court of the county or the clerk of the circuit corporation or chancery court of the city wherein is located its principal office, a list of the officers and directors of such corporation elected at said annual meeting (chap. 1, sec. 14).

20. **Anti-Trust Statute.** — There is no anti-trust statute in force in Virginia.

21. **Statutory Grounds for Forfeiture of Charter.** — Whenever the principal purpose for which the corporation was formed has failed or the management thereof is abandoned by its officers, or when operations under the charter have been suspended or abandoned for a period of three years, or the corporation has become insolvent, the charter of such corporation is liable to forfeiture or may be dissolved (chap. 1, sec. 15).

22. **Amendments.** — Before the amount of stock fixed by the incorporators as the minimum capitalization shall have been subscribed, any amendment to the original certificate may be made by a supplemental certificate signed and acknowledged by the incorporators, and certificate issued and recorded in the office of the State corporation commission in the same manner as provided in reference to the original certificate (chap. 1, sec. 5),

At any time after such subscription shall have been completed, the subscribers to the capital stock may, until the corporation is duly organized, apply to the State corporation commission for any amendment to the original certificate, and to that end may present the State corporation commission a supplemental certificate signed and acknowledged by them in the same manner as in the case of the original certificate, certified by a judge as provided in the case of original certificates, and thereupon said State corporation commission shall act thereon in the same manner as provided in the case of such original certificates, and if the amendment be issued then such supplemental certificate, together with all endorsements and order of the commission thereon, shall be recorded in the office of the State corporation commission as is provided in the case of original certificates, and when lodged in the office of the Secretary of the Commonwealth for record the original charter shall be deemed to be altered or amended accordingly.

At any time after organization any such corporation may change the nature of its business, change its name, decrease its capital stock, change the par value of the shares of its capital stock, change the location of its principal office in this State, extend its corporate existence, create one or more classes of preferred stock, and make such other amendments, changes, or alterations as may be desired, in the manner following, except that no increase of capital stock shall be made otherwise than in the manner prescribed in sec. 9 of this act.

The board of directors shall pass a resolution declaring that such amendment, change, or alteration is advisable, and calling a meeting of the stockholders to take action thereon, the meeting to be held upon notice by publication at least six times a week for two successive weeks prior to such meeting, in some newspaper published in or near the place where its principal office is located, or notice in writing to each of the stockholders, to be served on him personally, or by mailing the same to him at his last known post-office address, at least ten days prior to such meeting; such notice must state the time and place of the meeting and its object. If two-thirds in interest of each class of

the stockholders having voting power shall vote in favor of such amendment, change, or alteration, a certificate thereof shall be made by the president or by one of the vice-presidents, under the seal of the corporation, attested by the secretary and acknowledged by them before an officer authorized by the laws of the State to take acknowledgments of deeds. Such certificate, and if the amendment or alteration be one in respect to which the payment of a fee to the State is imposed by law, a receipt for such payment shall be presented to the State corporation commission, which shall ascertain and declare whether the said applicant, by complying with the requirements of the law, is entitled to the amendment, alteration, or extension set forth in said certificate, and shall issue or refuse the same accordingly. If the same is issued, the said certificate with the endorsements thereon, together with the order thereon of the commission, shall be forthwith certified as required by law to the Secretary of the Commonwealth, to be recorded by the last-named officer as provided in reference to original certificates, and shall be certified by him to the clerk of the circuit court of the county, or the circuit, corporation, or chancery court of the city, in which the original certificate of incorporation is recorded, and the clerk of such court shall thereupon record the same in his office in a book provided and kept for the recordation of charters, and shall endorse the fact of such recordation upon the said certificate, and return the same to the State corporation commission, to be lodged and preserved in the office of its clerk. As soon as the said certificate is lodged for recordation in the office of the Secretary of the Commonwealth, the original certificate of incorporation shall be deemed to be amended accordingly, provided, however, that such certificate of amendment, change, or alteration shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation, made at the time of making such amendment or alteration; provided that no amendment, change, or addition substantially changing the object for which said corporation was chartered, or extending the duration of its corporate existence, shall be made, except by unanimous consent of all the stockholders of said corporation.

In case the capital stock of any corporation organized under this chapter or under any charter heretofore granted by any court, or by the General Assembly of this State, for any purpose permitted under sec. 1 of this chapter, is found to be insufficient for its purposes, such corporation may increase its capital stock from time to time to any amount that it may deem requisite, such increase to be sanctioned by a vote in person or by proxy of two-thirds in amount of all the stockholders who shall be present or represented and voting at a meeting of the stockholders, which two-thirds shall amount to at least a majority of the capital stock of the corporation called by the directors for that purpose by a notice by publication at least six times a week, for two successive weeks prior to such meeting, in some newspaper published in or near the place where its principal office is located, or notice in writing to each of the stockholders, to be served on him personally, or by mailing the same to him at his last known post-office address, at least ten days prior to such meeting; such notice must state the time and place of the meeting and its general object, and the amount to which it is proposed to increase the capital stock. The proceedings of said meeting must be entered on the minutes of the proceedings of the stockholders; and if two-thirds in amount of such stockholders vote in favor of such increase, a certificate thereof shall be made by the president, or by one of the vice-presidents, under the seal of the corporation attested by the secretary, and shall be acknowledged



by said officers signing the same before any officer authorized by the laws of this State to take acknowledgments of deeds; and when so acknowledged, it, together with the receipt for the payment of any fee to the State which may be imposed by law for such increase of capital, may be presented to the State corporation commission, which shall ascertain and declare whether the said corporation has, by complying with the requirements of the law, entitled itself to make such increase of the capital stock of said corporation, and accordingly shall issue or refuse a certificate for said increase of capital. If the amendment to the charter of such corporation allowing such increase of capital be issued, it shall be certified by the commission as required by law to the Secretary of the Commonwealth, and recorded by the last-named officer in the charter records of his office, and by him certified to the clerk of the court of the county or city in which the original certificate of incorporation is recorded, who shall likewise record the same in his office, and endorse upon such certificate the fact of such recordation, and return the same to the State corporation commission to be lodged and preserved in the office of its clerk. As soon as the said certificate is lodged for recordation in the office of the Secretary of the Commonwealth, the charter of said corporation shall stand so amended, and the increase of capital stock shall become effective, and from time to time the board of directors may proceed to dispose of the capital stock as so increased, upon such terms and conditions and for such considerations as they may deem for the best interests of the corporation, but not until after full compliance with the requirements in that regard of sec. 167 of the Constitution of the State.

The decrease of the capital stock of any corporation organized under this chapter or under any charter heretofore granted by any court, or by the General Assembly of this State, for any purpose permitted under sec. 1 of this chapter, may be effected by retiring or reducing any class of stock, or by the surrender by every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain number of shares for retirement, or by retiring shares owned by the corporation, or by reducing the par value of the shares; and when any corporation shall decrease the amount of its capital stock, as hereinbefore provided, the certificate decreasing the same shall be published for three weeks successively, at least once in each week in a newspaper published in the county or city in which the principal office or place of business of the corporation is located, the first publication to be made within fifteen days after the recordation of such certificate, as required by sec. 7 of this chapter; but if there be no such newspaper published in said city or county, then a copy of said certificate shall be posted at the front door of the court-house of said county or city within fifteen days after the recordation of said certificate; provided that no such decrease in capital stock shall affect any right of any creditor of the said corporation existing at the time of such decrease.

**23. Extension of Corporate Existence.** — There is no provision for the extension of corporate existence after the expiration of the charter.

**24. Dissolution.** — The incorporators before the payment of any part of the capital stock and before beginning business may surrender all their corporate rights and franchises by following the steps prescribed in the statutes. After organization, on resolution of a majority of the board of directors, with the consent of two-thirds in interest of the stockholders, the charter may be voluntarily dissolved (chap. 1, secs. 11, 12, 15).

**25. Annual Franchise Tax.** — Before March 1 of each year every cor-

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poration shall pay into the treasury of the State a tax assessed by the State corporation commission as follows: With capital stock of \$25,000 and under, \$10; over \$25,000 and not exceeding \$50,000, \$20; over \$50,000 and not exceeding \$100,000, \$40; over \$100,000 and not exceeding \$300,000, \$60; over \$300,000 and not exceeding \$500,000, \$100; over \$500,000 and not exceeding \$1,000,000, \$200; in excess of \$1,000,000, \$10 for each additional \$100,000 or fraction thereof. Non-payment within the time required subjects the corporation to a penalty of five per cent per annum (Acts of 1903, p. 182).

**26. Annual Registration Fee.** — All domestic corporations other than charitable and foreign corporations doing business within the State shall pay annually into the treasury of the State before March 1 of each year the following registration fee: With capitalization of \$15,000 or under, \$5; over \$15,000 and not exceeding \$50,000, \$10; over \$50,000 and not exceeding \$100,000, \$15; over \$100,000 and not exceeding \$300,000, \$20; over \$300,000, \$25. This fee is payable in addition to the annual franchise tax or other taxes imposed upon the corporation. Failure to pay such fee for two years and ninety days operates as revocation of the charter of the corporation (Act of 1903, pp. 180, 182).

**27. Foreign Corporations.** — Every incorporated company doing business in this State shall have an office in the State, at which all claims against the company due residents of the State may be audited, settled, and paid. Every such company incorporated under a jurisdiction beyond the limits of the State (and hereinafter designated as a foreign corporation) shall, before doing business in this State, present to the State corporation commission (a) a written power of attorney executed in duplicate, appointing some person residing in this State its agent upon whom all legal process against the corporation may be served, and who shall be authorized to enter an appearance in its behalf; (b) two duly authenticated copies of the charter of the corporation; and (c) a certificate of the auditor of public accounts, showing the payment into the treasury of the fee required by law to be paid by such corporation, and shall obtain from said corporation commission a license to transact business in the State. If it shall be made to appear to the State corporation commission that said corporation has complied with the law relative to the licensing of a foreign corporation, of the character of the applicant corporation, then said corporation commission shall issue to said corporation a license to transact business in the State.

Foreign corporations are taxed the same as domestic corporations according to the amount of their property located within the State. This includes the payment of the original license tax and registration tax, but not the annual franchise tax (Code, secs. 1104-1105, as amended by Laws of 1903, chap. 242).

*Slaughter v. Commonwealth*, 13 Grat. 767; *Nickels v. P. B. L. & S. Ass'n*, 93 Va. 380; 25 S. E. 8; *Goldsberry v. Carter*, 100 Va. 438; 41 S. E. 858; *American Surety Co. v. Commonwealth*, 102 Va. 841; 47 S. E. 994.

## WASHINGTON.

(The references below are to Ballinger's Code and Statutes of Washington (1897), unless otherwise stated).

**1. Statutes under which Business Corporations may incorporate.** — The Business Corporation Act of Washington is to be found in Ballinger's Code, secs. 4250-4302 and acts amendatory thereof. Parties may incorporate

thereunder for manufacturing, mining, milling, wharfing, and digging, mechanical, banking, mercantile, improvement, and building purposes, or for the building, equipping, and managing water flumes for the transportation of wood and lumber, or for the purpose of building, equipping, and renting railroads, or constructing canals or irrigation canals, or engaging in any other species of trade or business. (See Laws of 1903, chap. 84; Laws of 1905, chap. 11.)

2. **Incorporators.** — Two or more persons. There are no residential requirements (sec. 4251; Laws of 1905, chap. 11).

*Hastings v. Company*, 29 Wash. 224; 69 Pac. 776.

3. **Contents of the Articles of Incorporation.** — The articles of incorporation must set forth :

*a. Name.* — No name can be used similar to that of an existing domestic corporation or of any foreign corporation that has obtained a permit to do business within the State (sec. 4251; Laws of 1903, chap. 84; Laws of 1905, chap. 11).

*b. Purposes.* — The objects for which the corporation is formed must be stated. The law expressly authorizes incorporation for one or more purposes (Laws of 1905, chap. 11).

*c. Capital Stock.* — The amount of capital stock, which may be any amount (Laws of 1905, chap. 11).

*d. Duration.* — The time of existence, not to exceed fifty years (Laws of 1905, chap. 11).

*e. Number of shares, or number of shares into which the capital stock is to be divided* (Laws of 1905, chap. 11).

*f. Trustees.* — The number of trustees and the names of those who shall manage the concerns of the company for such length of time (not less than two nor more than six months) as may be designated in the articles (Laws of 1905, chap. 11).

*g. Domicile.* — Name of the locality and county in which the principal place of business of the company is to be located (Laws of 1905, chap. 11).

4. **Statutory Powers.** — In addition to the statutory enumeration of common law powers, the statute confers the following additional powers : The right to vote by proxy, to remove trustees, to forfeit stock for non-payment of assessment, and giving stockholders in mining companies the right to inspect property (secs. 4253, 4255, 4262; Laws of 1901, chap. 120); to subscribe for, acquire by purchase or otherwise shares of stock of other corporations (Laws of 1905, chap. 27).

*Parsons v. Company*, 25 Wash. 492; 65 Pac. 765; *Barto v. Nix*, 15 Wash. 563; 46 Pac. 1033; *Pitcher v. Company* (Wash.), 81 Pac. 1047.

5. **Procuring the Charter.** — The incorporators must subscribe and acknowledge before an officer authorized to take acknowledgments the articles of incorporation in triplicate. One of these must be filed in the office of the Secretary of State and another with the county auditor of the county in which the principal place of business of the company is intended to be located. A third copy should be retained by the incorporators (sec. 4251; Laws of 1905, chap. 11).

6. **Corporate Indebtedness.** — There is no limitation upon the amount of corporate indebtedness which a corporation may incur. (See, however, sec. 4266.)

**7. Organization Tax.** — Every corporation having a capital stock divided into shares shall pay to the Secretary of State, upon filing of its articles, a fee of \$10 (B. C., 4285).

**8. Filing and Recording Fees.** — To the Secretary of State for filing and recording articles of incorporation, including issuance of certificate of incorporation, \$10; for filing and recording amendatory or supplemental articles of incorporation, including issuance of certificate, \$10; for filing and recording certificate of increase or decrease of capital stock, including issuance of certificate, \$10; for recording any of the foregoing documents in excess of twenty folios and for all such excess per folio, 15 cents; for copy of articles of incorporation duly certified under the seal of the State, \$5; for filing and recording in local county office the fee generally averages about \$3 (secs. 4285, 4287, 4288).

**9. Commencing Business.** — Before commencing business and within thirty days after it shall have filed its certificate of incorporation with the county auditor of the county in which it has its principal place of business, the corporation must file with the latter a statement sworn to by its president and attested by its secretary and sealed with its corporate seal, containing a list of all its officers and names and addresses and terms of office for which they have been chosen (secs. 4259, 4260). Except in the case of mining corporations, all the capital stock must be subscribed before business can be commenced (sec. 4266).

*City of Spokane v. Trustees*, 22 Wash. 172; 60 Pac. 141.

**10. Organization Meeting.** — The organization meeting must be held within thirty days after the certificate of incorporation is filed with the county auditor as required by law. The meeting must be held within the State, and statutory provision is made for calling the same (secs. 4255, 4258, 4260). The first meeting of the trustees shall be called by a notice, signed by one or more persons named as trustees in the certificate, setting forth the time and place of meeting, which notice shall be delivered personally to each trustee or published at least 20 days in some newspaper in the county wherein the corporation's principal place of business is located (sec. 4258).

**11. Meetings of Stockholders and Trustees.** — There are no provisions as to where meetings shall be held, except that meetings for the election of trustees must be held at the principal place of business within the State. Places for other meetings are fixed by the by-laws (secs. 4255, 4258, 4276).

**12. Trustees' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least two trustees who must be stockholders and one of whom shall be a resident of the State of Washington, and a majority of them citizens of the United States, and must take and subscribe to an oath of office (sec. 4255).

*O. & B. F. C. M. & M. Co. v. Conlan* (Wash.), 75 Pac. 798.

*b. Liabilities.* — All trustees not formally dissenting to the declaration of illegal dividends or to the unlawful withdrawal of any part of the capital stock are jointly and severally liable to the corporation and to the creditors to the full amount so divided or reduced or paid out (sec. 4265; see also Laws of 1903, chap. 98).

**13. Stockholders' Liabilities.** — Stockholders are only liable to the extent of their unpaid stock subscriptions (sec. 4262; Cons., Art. XII. sec. 4).

**14. Stock Certificates.** — Stock certificates must be signed by such officers as the by-laws prescribe.

15. **Preferred Stock.** — The act does not expressly authorize the issuance of preferred stock.

16. **Payment of Capital Stock.** — Stock must be paid for in money or money's worth. Special provision is, however, made in the case of mining corporations. Where the amount of capital stock of such corporations consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim within the State, no material subscription to the capital stock is necessary, but each owner thereof shall be deemed to have subscribed such an amount to the capital stock of the corporation as in its by-laws shall represent the value of so much of his interest in said mining claims or legal title to which he may by deed or other instrument vest in the corporation for mining purposes (sec. 4280; Cons., Art. XII. sec. 6).

*Dunlap v. Rauch*, 24 Wash. 620; 64 Pac. 807; *Krisch v. Company* (Wash.), 81 Pac. 855.

17. **Books.** — Stock transfer books must be kept at all times at the principal office of the corporation in the State (sec. 4269). These are open to the inspection of stockholders.

*State v. Company*, 21 Wash. 451; 58 Pac. 584.

18. **Office and Agent.** — Every corporation must maintain an office within the State and an agent to receive service of process (sec. 4251).

19. **Reports.** — Before the second Tuesday in January incorporators must file with the auditor of the county where business is located a statement showing names and addresses and titles of company's officers and terms of office, and also, within thirty days of date of incorporating, must file a similar report. No penalty however is provided for failure to comply therewith, and the provision is generally disregarded (secs. 4259, 4260; see also Laws of 1905, chap. 115).

20. **Anti-Trust Statute.** — There is no anti-trust statute in force in this State. The Constitution, however, prohibits combinations to fix the price or limit the production of commodities (Cons., Art. XII. sec. 22).

21. **Statutory Grounds for Forfeiture of Charter.** — The provisions of law as to the bringing of information in the nature of *quo warranto* against corporations will be found in Ballinger's Codes and Statutes (secs. 5189, 5190).

22. **Annual Franchise Tax.** — On or before July 1st of each year every corporation must pay an annual license fee of \$10 (sec. 4289).

23. **Amendments.** — Amendments for any purpose may be made by a majority vote of the trustees and the vote or written assent of two-thirds of the capital stock of the corporation. If the written assent of two-thirds of the capital stock has not been obtained, this vote of said stock must then be taken at any regular meeting called for that purpose in the manner provided in the by-laws for special meetings of stockholders. The president and secretary of the said corporation shall certify such amendments in triplicate under the seal of said corporation to be correct, and file a copy of the same as in the case of the original articles. The time of existence of such corporation shall not be extended by amendment beyond the time fixed in the original articles of incorporation (Laws of 1905, chap. 11).

Whenever a corporation shall execute and file in the office of the Secretary of State and in the office of the county auditor of the proper county supplemental articles of incorporation changing its corporate name, such corporation shall file in the office of such county auditor at the time of filing such supplemental articles, or within ten days thereafter, a written notice signed by the

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president, vice-president, and secretary, setting forth its original corporate name, its corporate name as changed, and stating that supplemental articles making such change of name have been filed in the office of the Secretary of State and in the office of the county auditor of the county (Laws of 1905, chap. 109).

Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by a notice signed by at least a majority of the trustees, and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located, or if no newspaper is published in the county, then the nearest thereto in that State, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of the stock shall be necessary to increase or diminish the amount of the capital stock (sec. 4272).

If at a meeting so called a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company and the amount to which the capital is to be increased or diminished, shall be made out, and signed and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the trustees, and filed in the same manner as is required in the case of original articles, and when so filed the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate (sec. 4273).

Any corporation desiring at any time to remove its principal place of business into some other county in the State shall file in the office of the county auditor a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal at least once in each week for four weeks in the newspaper published nearest to the city, town, or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of any corporation hereafter formed under this chapter shall not be rendered invalid by reason of the fact that its principal place of business may not have been designated in the certificate of incorporation. Provided that within three months from the passage of this chapter such corporation shall cause publication to be made once a week for at least four weeks in a newspaper published nearest the city, town, or locality and where the principal place of business of such corporation has been located, designating the city, town, or locality and county where its principal place of business shall be located. On compliance with the provisions of the section in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established or removed at or to any designated city, town, or locality and county in the State (sec. 4276).

**24. Extension of Corporate Existence.** — No provision is made for the extension of corporate existence.

**25. Dissolution.** — Corporations may be dissolved on vote of two-thirds of all stockholders upon application to the courts, or by three-fourths vote of all its members it may surrender its corporate powers (sec. 4275).

**26. Foreign Corporations.** — Must file with the Secretary of State certified copy of charter and appointment of resident agent to receive service of

process. Shall pay a license fee of \$10 each year (Laws of 1899, chap. 58, secs. 4289-4294).

Whitman Ag. Co. v. Strand, 8 Wash. 647; 36 Pac. 682; Edison Co. v. Canadian Co., 8 Wash. 370; 36 Pac. 260; Rathbone, etc. Co. v. Frost, 9 Wash. 162; 37 Pac. 298; K. G. S. Bank v. Laurence, 32 Wash. 572; 73 Pac. 680.

## WEST VIRGINIA.

(The references below are to the Code of West Virginia, 1899, chaps. 52-54, as amended by Laws of 1901, chap. 35.)

### 1. Statutes under which Business Corporations may incorporate. —

The Business Corporation Act is to be found in the Code of West Virginia (Laws of 1899, as amended in 1901), chap. 52, secs. 1-24; chap. 53, secs. 1-63; chap. 54, secs. 1-83). For convenience in classification for prescribing and assessing license tax on charters or certificates of incorporation, corporations are divided into two classes, domestic and foreign. A domestic corporation is (a) one incorporated by or under the laws of this State, or (b) under the laws of the State of Virginia before June 20, 1863, and which has its principal place of business and chief works (if it have chief works) in this State. Every other corporation is a foreign corporation. Domestic corporations are subdivided into two classes, resident and non-resident. A resident corporation is a domestic corporation whose principal place of business or chief works (if it have chief works) are located within this State, and a non-resident corporation is a domestic corporation whose principal place of business or chief works is located without this State. The words "chief works" as used in this chapter include shops, factories, mines, manufacturing plants, or any building or other place where mechanics, artisans, or laborers are employed. No corporation can be incorporated for the sole purpose of purchasing real estate in order to sell the same for profit (Code 52:3, as amended by Laws of 1901, chap. 35, and Laws of 1903, chap. 3).

2. **Incorporators.** — Five or more persons. There are no residential requirements (Code 54:6).

Crumlish Admr. v. Ry. Co., 40 W. Va. 627; 22 S. E. 90; Greenbrier Ind. Exposition v. Rhodes, 37 W. Va. 738; 17 S. E. 305.

3. **Contents of the Agreement of Incorporation.** — The agreement of incorporation must contain:

a. **Name.** — Similarity of corporate names forbidden (Code 54:6, sub. 1; see also Code 53:11; Laws of 1903, chap. 3, sec. 3).

b. **Domicile.** — Location of its principal place of business and its chief works (Code 54:6, sub. 2). The principal office need not be within the State. (See Code 53:46.)

c. **Purposes.** — Objects for which the corporation is formed. Any number of purposes may be inserted (Code 54:6, sub. 3).

d. **Capital Stock.** — Amount of total authorized capital stock, number of shares and par value thereof, and the amount of the same paid in. If preferred stock is desired, the terms on which the same is issued must be set forth (Code 54:6, sub. 4; see also Code 53:17, as amended by Laws of 1901, chap. 35). Capitalization and par value of shares may be any amount (Code 53:15).

e. **Stock Subscriptions by Incorporators.** — Names and post-office addresses of the incorporators and the number of shares subscribed for by each (Code

54 : 6, sub. 5). There must be at least five *bona fide* stockholders who are required to pay in ten per cent of their subscriptions forthwith (Code 53 : 17, 25).

*f. Duration.* — Period of corporate existence not to exceed fifty years (Code 54 : 6, sub. 6; see also Code 54 : 11, as amended by Laws of 1901, chap. 85).

*g. Provisions for Regulation of Corporate Affairs.* — Any provisions desired may be inserted for the regulation of the business and for the conduct of the affairs of the corporation, or defining, limiting, or regulating the powers of the corporation, the stockholders and directors (Code 54 : 6, sub. 7).

*h.* If the corporation desires to hold more than ten thousand acres of land in West Virginia, the agreement must set forth the maximum number of acres it desires to hold (Code 54 : 6). Every corporation, including railroad and all other corporations holding more than ten thousand acres of land in this State, shall pay a tax of five cents per acre for each acre in excess of ten thousand acres. Corporations heretofore incorporated and foreign corporations heretofore authorized to hold property and transact business in this State, which are liable to pay such tax and have not paid the same, shall pay the same to the Secretary of State before August 1, 1905. Such corporations shall, under the hand of the president and seal of the corporation, and attested by the secretary, apply to the Secretary of State for a certificate authorizing the holding of the number of acres stated in such application, and pay the tax thereon, and it shall be the duty of the Secretary of State to issue to such corporation a certificate stating the amount of tax paid and number of acres on which paid, and the number of acres the corporation is thereby entitled to hold. Hereafter a domestic corporation shall state in its agreement for incorporation, and a foreign corporation shall state in its application for authority to hold property and transact business in this State, the number of acres it desires to hold and pay the tax thereon to the Secretary of State before the certificate of incorporation or of authority is issued. If any corporation desires to increase the number of acres it may hold, it shall make application therefor to the Secretary of State. Such application shall be signed by the president of the corporation, sealed with its corporate seal and attested by the secretary, and it shall state the number of acres it then holds and the number of acres it desires to hold. The Secretary of State shall collect the proper amount of tax, and shall issue to the corporation a certificate, reciting the number of acres the corporation may hold and the amount of tax paid to him. If any corporation shall fail to comply with the provisions of this section, it shall be liable to a fine of not less than \$25 and not exceeding \$500, and be liable to pay such tax due to the State with a penalty of ten per cent on the total amount due, and be liable to all the provisions of sections 136 and 137 so far as they are applicable. All moneys received by the Secretary of State under the provisions of this section he shall report to the auditor and pay into the State treasury in the manner prescribed for the payment of other moneys received by him.

**4. Statutory Powers.** — In addition to a statutory enumeration of the common law powers of corporations (Code, chap. 52, sec. 1), the following additional powers are granted : To subscribe with the consent of the stockholders for the stock of other corporations; to vote by proxy; to transact business in other States and countries; to hold its organization, stockholders', and directors' meetings outside of the State; to purchase its own stock; to transfer all its assets; to issue its stock for property or services; may have an office, own property, and carry out the corporate purposes without the



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State; cumulative voting in the election of directors is mandatory; to appoint an executive committee from the board of directors; to forfeit stock for non-payment of assessments; to remove directors, and to issue preferred stock and bonds (Code 52:1; 52:3; 53:3; 54:6; 54:23; 53:18; 54:83, as amended by Laws of 1901, chap. 35; 53:24; 53:42; 53:44; 53:53; 53:16; 54:82 c, sub. 11).

*Cross v. Ry. Co.*, 35 W. Va. 174; 12 S. E. 1071; *Rece v. Company*, 32 W. Va. 164; 9 S. E. 212; *P. L. R. Co. v. Board of Education*, 20 W. Va. 360; *Smith v. Cornelius*, 41 W. Va. 59; 23 S. E. 599.

**5. Procuring the Charter.** — The agreement of incorporation must be signed and acknowledged by each of the five incorporators. Each incorporator must be a subscriber for at least one share of stock. Two of the incorporators must give their affidavit that the amount stated therein to have been paid on the capital stock has been in good faith paid in for the purposes of the business of the intended corporation and with no intention or understanding that the same shall be withdrawn. When application is made to the Secretary of State for a certificate of incorporation for a resident corporation, two of the incorporators must make affidavit to the following effect that the statement made in such certificate, to wit: "That said corporation shall keep its principal place of business at \_\_\_\_\_ in the county of \_\_\_\_\_ and State of West Virginia" is true, and that said principal place of business and chief works have been so located in good faith, and not for the purpose of evading any law of the State of West Virginia, etc." Within three months after filing the agreement of incorporation in the office of the Secretary of State, a certified copy thereof must be recorded in the office of the clerk of the county in which the principal office is located, if within West Virginia; or if the principal office is located out of the State, then such certified copy must be filed in the office of the clerk of the county in which the statutory attorney resides (chap. 136, sec. 127; chap. 54, sec. 20; Laws of 1901, chap. 35).

*Greenbrier Ind. Exposition v. Rodes*, 37 W. Va. 738; 17 S. E. 305; *Singer Mfg. Co. v. Bennett*, 28 W. Va. 16.

**6. Corporate Indebtedness.** — There is no statutory limitation upon the amount of indebtedness which the corporation may incur.

**7. Organization Tax.** — The organization tax is in fact the first year's annual tax. The statute distinguishes between resident corporations and non-resident corporations in the matter of organization taxes. Resident corporations are those whose principal place of business and chief works are to be located in West Virginia. Non-resident corporations are those whose principal place of business and chief works are located outside of West Virginia. For both classes of corporations the license year begins May 1st. On every certificate issued after July 1st the State collects only one-tenth of the annual license tax for each month or fraction thereof for the remainder of the license year. However, if the charter issues on or after March 1st, then in addition to the proportionate tax for the remaining two months, there must also be paid a tax for the full license year beginning May 1st thereafter.

For resident corporations the annual license tax is as follows: \$5,000 or less, \$10; more than \$5,000 and not more than \$10,000, \$15; more than \$10,000 and not more than \$25,000, \$20; more than \$25,000 and not more than \$50,000, \$25; more than \$50,000 and not more than \$75,000, \$30; more than \$75,000 and not more than \$100,000, \$35; more than \$100,000 and not more than \$125,000, \$40; more than \$125,000 and not more than \$150,000,

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\$45; more than \$150,000 and not more than \$175,000, \$50; more than \$175,000 and not more than \$200,000, \$55; more than \$200,000 and not more than \$300,000, \$70; more than \$300,000 and not more than \$400,000, \$85; more than \$400,000 and not more than \$500,000, \$100; more than \$500,000 and not more than \$1,000,000, \$150; \$1,000,000, \$150, and \$40 on each million dollars or fraction thereof in excess of \$1,000,000 (Laws of 1905, chap. 136, sec. 128).

For non-resident corporations the annual license tax is as follows: \$10,000 or less, \$15; more than \$10,000 and not more than \$25,000, \$20; more than \$25,000 and not more than \$50,000, \$30; if more than \$50,000 and not more than \$75,000, \$40; if more than \$75,000 and not more than \$100,000, \$50; if more than \$100,000 and not more than \$1,000,000, \$50, and an additional 25 cents on each thousand dollars or fraction thereof in excess of \$100,000; if more than \$1,000,000 and not more than \$2,000,000, \$275, and an additional 25 cents on each and every \$1,000 or fraction thereof in excess of \$1,000,000; if more than \$2,000,000 and not more than \$4,000,000, \$475, and an additional 10 cents on each and every thousand dollars or fraction thereof in excess of \$2,000,000; if more than \$4,000,000, \$675, and an additional \$50 on each and every \$1,000,000 or fraction thereof in excess of \$4,000,000 (Laws of 1905, chap. 136, sec. 128). Non-resident domestic corporations must, at the time of taking out their charter, pay to the State Auditor, as their attorney in fact, upon whom service of process may be made (see post, sec. 9), \$10 for his services as such for the then current year ending on the 30th day of April, next ensuing; or on or before the first day of May for such year such corporation shall pay to the State Auditor the like sum of \$10 for his services as such attorney (Laws of 1905, Senate Bill, No. 77, passed February 22, 1905).

**8. Filing and Recording Fees.** — To the Secretary of State for certificate of incorporation, or copy thereof, \$10; for each certified copy of certificate of incorporation, \$10; for each certificate of change of name, or increase or decrease of authorized capital stock, or change of principal office, or amendment to certificate of incorporation, \$5; for recording power of attorney, \$3; for endorsing and filing reports of corporations, \$1 each (Laws of 1904, chap. 13). Filing and recording fees in local county office average about \$2.

**9. Commencing Business.** — The corporation must hold its organization meeting within six months after the issuance of the certificate of incorporation. Within ninety days after incorporation non-resident domestic corporations must, by power of attorney, duly executed and acknowledged and filed in the Auditor's office of the State, appoint the said Auditor and his successors in office, their attorney in fact to accept service of process and notice in the State for such corporation, and by the same instrument they must declare their consent that service of any process or notice in the State upon said attorney in fact, or his acceptance thereof endorsed thereon, shall be equivalent for all purposes, and shall be and constitute due and legal service upon said corporation. The post-office address of all non-resident domestic corporations must be filed with the power of attorney. Non-resident domestic corporations may if they choose, however, designate in addition to the State Auditor, other persons within the State as their attorney in fact upon whom service of process may be made (Laws of 1905, Senate Bill No. 77, passed February 22, 1905). Business must be commenced within one year after incorporation (Laws of 1901, chap. 35).

*Bank v. Lumber Co.*, 32 W. Va. 357; 9 S. E. 243; *Richardson v. Graham*, 45 W. Va. 134; 30 S. E. 92.

10. **Organization Meeting.**—May be held within or without the State (Code 54:15, 23).

11. **Meetings of Stockholders and Directors.**—If the by-laws so provide, any stockholders' or directors' meetings may be held without the State. Otherwise they must be held within the State (Code 54:23; see also Code 53:51, as amended by Laws of 1901, chap. 35).

*Reilly v. Oglebay*, 25 W. Va. 36; *R. S. & G. Ry. Co. v. Woodyard*, 46 W. Va. 558; 33 S. E. 285.

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.*—There must be at least five directors, unless the by-laws otherwise prescribe. Unless otherwise provided by the by-laws, directors must be stockholders and residents of the State (Code 53:49).

*Donnally v. Hearndon*, 41 W. Va. 519; 23 S. E. 646; *Darrah v. Company*, 50 W. Va. 417; 40 S. E. 373.

*b. Liabilities.*—Assenting directors are jointly and severally liable to creditors for the illegal declaration of dividends, to the extent of the capital illegally withdrawn in this manner (Code 53:40).

*Zenn v. Mendel*, 9 W. Va. 580; *Smith v. Cornelius*, 41 W. Va. 59; 23 S. E. 599; *Liner v. Company*, 44 W. Va. 175; 28 S. E. 730; *Kyle v. Wagner*, 45 W. Va. 349; 32 S. E. 213.

13. **Stockholders' Liabilities.**—Stockholders are liable to creditors to the amount of their unpaid stock subscriptions. They are also liable to creditors to the extent of any illegal dividends received by them (Cons., Art. II. sec. 2; Code 53:22, 40).

*W. E. R. E. Co. v. Nash*, 51 W. Va. 341; 41 S. E. 182.

14. **Stock Certificates.**—Must be signed by the president or vice-president and such other officers, if any, as the board of directors may direct. The certificates must show the amount paid on each share (Code 53:35, as amended by Laws of 1901, chap. 35).

15. **Preferred Stock.**—The act specifically provides that preferred stock may be issued either by providing for it in the certificate of incorporation, or by resolution adopted at a general meeting of the corporation (Code 53:61; Code 54:6, as amended by Laws of 1901, chap. 35).

16. **Payment of Capital Stock.**—The statute provides that at least ten per cent of the par value of each share shall be paid at the time of such subscription, and the residue as required by the board of directors or the commissioners having control of the subscription. Stock in corporations other than mining and manufacturing shall not be sold or disposed of at less than par, except by a vote of three-fourths of all the stock of the corporation outstanding after the advertisement of such intention. But mining or manufacturing corporations may issue stocks or bonds, and negotiate the sale of the same, in payment for real and personal property, at such price and upon such terms and conditions as may be agreed upon by the owners and the directors or stockholders. All stock so issued shall be fully paid and not liable for any further call or assessment, and in absence of actual fraud in the transaction the valuation placed by the directors upon the property so purchased shall be conclusive (Code 53:25, 52:24, as amended by Laws of 1901, chap. 35).

*Richardson v. Graham*, 45 W. Va. 134; 30 S. E. 92.

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17. **Books.** — No books are required to be kept in the State (see Code 53: 47, 54).

*Lipcombs Adm'r v. Condon*, W. Va.; 49 S. E. 392.

18. **Office and Agent.** — Every non-resident corporation must, within ninety days after its organization, execute a power of attorney appointing the State Auditor as its statutory attorney. This power of attorney must be filed in the office of the State Auditor (Laws of 1905, Senate Bill No. 77 passed Feb. 22, 1905).

19. **Reports.** — The board of directors must make an annual report to the stockholders of the condition of the corporation. They must also, within ninety days after the first election, and after every annual meeting thereafter, make a report giving the names and post-office addresses of the president and secretary, and post-office address of the principal office of the corporation. A penalty is provided for not making this report (Code, chap. 53, sec. 46, as amended by Laws of 1901, chap. 35).

20. **Anti-Trust Statute.** — There is no anti-trust statute in force in West Virginia.

21. **Annual License Tax.** — Is the same amount as the organization tax already set forth. It becomes due and payable on May 1st of each year. The penalty for not paying the tax before September 1st is \$5. After September 1st an additional one per cent for each month such failure continues, together with costs of publication, etc., is exacted (chap. 19, sec. 4).

22. **Statutory Grounds for Forfeiture of Charter.** — The charter may be forfeited on the following grounds:

(1) For failing to have five stockholders for a period of six months (Code, chap. 53, sec. 17).

(2) For failure to pay license tax (Code, chap. 32, sec. 90, as amended by Laws of 1901, chap. 35; Laws of 1903, chap. 4).

(3) For suspension of business for two years (Code, chap. 53, sec. 7).

(4) For failure to organize and commence business within one year after incorporation (Code, chap. 53, sec. 6, as amended by Laws of 1901, chap. 35).

(5) For misuse or abuse of charter (Code, chap. 109, secs. 6-12).

(6) Where the certificate has been obtained for a fraudulent purpose, or for a purpose not authorized by law (Code, chap. 109, secs. 6-12).

(7) For failure to appoint resident agent as required by law (Code, chap. 54, sec. 24; Laws of 1905, Senate Bill No. 77).

*Moore v. Schoffert*, 22 W. Va. 282; *G. L. Co. v. Ward*, 30 W. Va. 43; 3 S. E. 227.

23. **Amendments.** — Any corporation formed, or which may hereafter be formed, or which has accepted or may accept the provisions of this chapter, may, by a resolution at a general or special meeting of the stockholders thereof, change the place of its principal office, or make such reduction or increase in the number of shares of its capital stock, or the par value of each share, as may be decided upon by said stockholders, a majority of the stock of such company being represented by the holders thereof at such meeting in person or by proxy and voting therefor; provided that notice be given by advertisement published at least two weeks before such action in some newspaper of general circulation printed in the county wherein the principal office of such corporation is located, if such office be within the State; and if such office be not in this State, then in some newspaper printed at the capital of this State, of the intention to offer such resolution; and provided, further,

that such resolution may be adopted without such notice being published, if the meeting at which it is adopted be assented to in writing by all of the stockholders of the company at the time or before the meeting is held. Any corporation heretofore incorporated, or that may be incorporated before this act takes effect (that is, before February 18, 1901), may reduce its authorized capital stock in the manner prescribed in this act. If such application be made to the Secretary of State before January 1, 1903, he shall charge no fee whatever for such certificate, or for any work in connection therewith or relating thereto provided in this act, nor shall he collect a tax for the State seal thereon (Code 54 : 21, amended 1901, Act 35).

When such change of principal office or increase or reduction shall have been made by any such corporation, the president thereof shall, under his signature and the seal of the corporation, certify the resolution to the Secretary of State; and the Secretary of State, under his hand and the great seal of the State, shall issue to the corporation so making such change of principal office or increase or reduction, a certificate reciting the resolution and declaring the proposed change of principal office or increase or reduction to be authorized by law, which certificate shall be received in all courts and places as evidence of the change in the number or par value of the shares of the capital stock of such corporation, and of the authority to increase or reduce the same, or of such change of said principal office (Code 54 : 22, amended 1901, Acts 35). A corporation at any time, when it accepts the provisions of this chapter, may change the par value of its shares, as the stockholders thereof in general meeting, or the board of directors under the authority given them by the stockholders may determine; in which case the statement to be filed as aforesaid with the Secretary of State shall show the proposed change, and the same shall have effect from the date of the certificate of incorporation (Code 54 : 13).

If the stockholders of a joint company desire to change the name thereof, they may do so in the same manner that they may increase or reduce the number of shares of the capital stock, and, after doing so, such resolution changing such name, certified under the common seal and signature of the president of the corporation, shall be delivered to the Secretary of State, who shall issue his certificate under seal reciting the resolution, and declaring that the corporation is to be thereafter known by the new name so adopted; and such certificate shall be evidence of the change of name therein specified, and the Secretary of State shall keep an index in his office showing the new name and the change from the old name, and the old name showing the change to the new name (Code 53 : 12, amended 1901, Act 35).

Any corporation, except railroad companies, may agree to and adopt a new agreement, so as to enlarge or diminish the objects and purposes for which it was incorporated, by signing and acknowledging a new agreement in all respects as the original agreement was signed and acknowledged. Such new agreement must be signed and acknowledged by the holders of a majority of the stock of the corporation, and a resolution showing that such new agreement has been made must be spread upon the minutes of the stockholders' meeting and concurred in by the holders of a majority of the stock. When such new agreement is made, the same and a certified copy of such resolution, under the hand of the president of the corporation and the seal of the corporation, shall be delivered to the Secretary of State, and the Secretary of State shall issue his certificate in the form prescribed in the ninth section of this chapter, so far as the same may be found practicable; and from thence such

corporation shall be subject to such new agreement and certificate. And all the provisions of this chapter shall apply to such new certificates and to the corporations receiving the same, in like manner as to original agreements and certificates. And all the provisions of this chapter shall apply to such new certificates and to the corporations receiving the same, in like manner as to original certificates of incorporation and agreements, except as herein otherwise provided.

*L. F. & S. H. R. R. Co. v. Company*, 25 W. Va. 324.

**24. Extension of Corporate Existence.** — May be extended upon compliance with the statute for an additional period of fifty years (Code 54, sec. 11, as amended by Laws of 1901, chap. 35).

**25. Dissolution.** — A majority of the stockholders may at any time at a meeting resolve to discontinue the corporate business, and may divide the property and assets that may remain after paying the debts and liabilities of the corporation. Before a certificate of dissolution shall issue, all State license taxes must be paid. Not less than one-third in interest of the stockholders of a corporation desiring to wind up its affairs may petition the court of chancery in the county in which the principal office or place of business is situated; but if there be no such office or place of business in the State, they may petition the circuit court of the county in which the other stockholders, or any one or more of them reside, stating the grounds of their application. The charter may also be voluntarily surrendered before organization (Code, chap. 53, sec. 56; chap. 53, secs. 57–59; chap. 53, sec. 6, as amended by Laws of 1901, chap. 35; Laws of 1903, chap. 3, sec. 4).

*Weigand v. Company*, 44 W. Va. 133; 28 S. E. 803; *Hurst v. Company*, 30 W. Va. 158; 3 S. E. 564.

**26. Foreign Corporations.** — Foreign corporations must file in the Secretary of State's office and in the office of the county clerk of the county where the principal office is located, a copy of the charter, and a certificate of authority to do business from the Secretary of State. It must also file with the Secretary of State a written acceptance of the condition that it will exercise its powers subject to same conditions imposed upon domestic corporations. Foreign corporations must at the time of procuring authority to do business in the State, by power of attorney duly executed and acknowledged and filed in the State Auditor's office, appoint such State Auditor as its attorney in fact upon whom process and notices may be served. At the same time they must pay to the State Auditor \$10 for his services as such for the then current year ending on the 30th day of April next ensuing; or on or before the first day of May for each year thereafter such corporation shall pay to the State Auditor a like sum of \$10 for his services as such attorney. The post-office address of the corporation must be filed at the same time (Laws of 1905, Senate Bill No. 77, passed February 22, 1905).

Every foreign corporation at the time of its application for the certificate mentioned in sec. 30, chap. 54, of the Code, shall file with the Secretary of State a report, preliminary to the annual report hereinbefore provided for, which preliminary report shall contain sufficient information upon which to base an assessment of its license tax for the then current year. It shall be the duty of the Secretary of State to make assessment of its license tax for the said year, and he may require such further information as he may deem necessary for that purpose. Before issuing such certificate, the Secretary of

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State shall collect the amount of license tax he finds to be proper for the license tax year ending with the thirtieth day of the succeeding April. If the certificate be issued after the last day of July and before the first day of the ensuing May, the Secretary of State shall assess and collect such taxes at the rate of one-tenth of the amount of the annual license tax for each month or fractional part of a month to ensue before the said first day of May. Thereafter on or before the first day of May next following the date of the certificate of authority, and on or before every succeeding first day of May, the Auditor shall collect such tax for a full year; provided that if the certificate be issued in the month of March or April, the Secretary of State shall assess and collect the license tax for said month, as well as for a full year beginning with the first day of the ensuing May.

Every foreign corporation holding property, or doing business in this State, shall make report to the Auditor annually in the month of February, in which report shall be set out:

1. The name of such corporation, the name of the State or country by which incorporated, the date of incorporation, the date of the certificate of the Secretary of State authorizing it to do business in this State, the place of its principal office, the names and post-office addresses of its president, secretary, and of its officer (if any) charged with the duty of making returns of its property for taxation, and the name and post-office address of its attorney of record in this State.

2. The number of shares of its authorized capital stock and the par value of each share.

3. The value of the property owned and used by such corporation within the State, where situate, of what it consists, and the number of acres of land it holds in this State, and the value of its property owned and used without this State; and

4. The proportion of its capital stock which is represented by property owned and used in the State of West Virginia, which report shall be verified by the affidavit of the president, secretary, or other executive officer of such corporation. It shall be the duty of the Auditor to assess and fix the license tax according to the proportion of the capital stock which is represented by the property owned and used in this State, according to the rates prescribed in sec. 126 of this chapter, if the assessed value of its property located in this State amounts to \$5,000; but if the assessed value of such property be less than \$5,000, the assessment shall be according to the rates prescribed in sec. 128 of this chapter; provided that no such corporation shall pay an annual license tax of less than \$100. The Auditor may in any case require such additional information as he may deem necessary to enable him to assess and fix the just amount of license tax of such corporation; and it shall be his duty to notify every such corporation of the amount so assessed by him; and it shall be the duty of the corporation to pay the same into the treasury of this State within thirty days thereafter, and if it shall fail to do so, it shall be liable to the penalties prescribed in secs. 136 and 137 of this chapter.

If any foreign corporation desires no longer to hold property and transact business in this State, it may surrender to the State its authority therefor in the following manner: It shall publish once in each week for four successive weeks, in some newspaper of general circulation published in the county in the State where it carries on its business, a notice of its intention to withdraw from the State. After such publication it shall make application to the Secretary of State for a certificate of withdrawal, which application shall be

signed by the president of the corporation, sealed with its corporate seal and attested by its secretary, and be accompanied by a copy of the said notice and the publisher's certificate of its publication. The Secretary of State shall file the same in his office and issue to said corporation a certificate of withdrawal, but said certificate of withdrawal shall not be issued unless and until the corporation has paid into the State treasury any amount it may owe as license tax, including all fines, interest, and penalties as provided in sec. 56 of chap. 53 of the Code. The issuance of such certificate of withdrawal shall not relieve the corporation of any debt or obligation due from it to the State or any resident thereof.

Toledo, etc. Co. v. Thomas, 33 W. Va. 566; 11 S. E. 37; B. J. Co. v. Scherr, 510 W. Va. 533; 40 S. E. 514; Floyd v. N. L. & I. Co., 49 W. Va. 327; 38 S. E. 653; Rell v. Company, 32 W. Va. 164; 9 S. E. 212; Quesenberry v. Association, 44 W. Va. 512; 30 S. E. 73; Childs v. Hurd, 32 W. Va. 66; 9 S. E. 362; Thompson v. Association (W. Va.), 50 S. E. 756.

## WISCONSIN.

(The references are to the Wisconsin Statutes of 1898, unless otherwise stated. They are published in two volumes, and are edited and annotated by Sanborn & Berryman.)

1. **Statutes under which Business Corporations may incorporate.** — The Business Corporation Act is found in the Revised Statutes of Wisconsin (1898), secs. 1748–1791 m. Special acts are provided for banking, insurance, railway construction and operation companies, and plank and turnpike roads.

2. **Incorporators.** — Three or more. All must be residents of the State (R. S., sec. 1771).

3. **Contents of the Articles of Incorporation.** — The articles of incorporation must contain :

a. *Purposes.* — Any number of the classes specified (R. S., sec. 1771).

State *ex rel.* Lederer v. Company, 88 Wis. 512; 60 N. W. 796.

b. *Name.* — Similarity of names not forbidden. Cannot use the names of individuals in the manner in which they are ordinarily used in copartnerships (R. S., sec. 1772, sub. 2). The name cannot contain the names of individuals in the manner in which they are ordinarily used, and must be such as to distinguish it from any other corporation organized under the laws of the State (Laws of 1905, chap. 507.)

I. O. of F. v. Commissioner, 98 Wis. 94; 73 N. W. 326.

c. *Domicile.* — Location within the State (R. S., sec. 1772; Laws of 1905, chap. 507).

d. *Capital Stock.* — Amount, number of shares, and par value of same (R. S., sec. 1772).

e. *Directors and Officers.* — Designation of general officers and number of directors. There must be at least three directors, and they may be divided into classes if desired (R. S., secs. 1776, 1772, sub. 4).

f. *Duties of Officers.* — Principal duties of the several officers respectively (R. S., sec. 1772, sub. 5).

g. *Membership.* — Method and conditions upon which members shall be accepted, discharged, or expelled (R. S., sec. 1772, sub. 6).

h. *Regulation of Corporate Affairs.* — Provisions for the interests of the



corporation, the acknowledgment of the purposes thereof (sec. 1772, sub. 7; Laws of 1905, chap. 507).

*Ford v. Hill*, 92 Wis. 188; 66 N. W. 115.

i. *Corporate Existence*. — Duration may be inserted if desired; otherwise unlimited (Laws of 1905, chap. 507).

j. *Organization Meeting*. — Time and place for first meeting for election of officers (R. S., sec. 1773).

4. *Statutory Powers*. — In addition to a very full statutory enumeration of the "common law" and "incidental powers" the act provides for the following additional powers: A limited power to hold stock in other corporations; to vote by proxy; to issue preferred stock; to acquire the rights, privileges, or franchises conferred upon any person by the law of the State where the same would be in direct aid of the corporation's business; may establish a sinking fund for the payment of corporate debts, classify directors, and hold stock in other corporations; may sell all of its property (R. S., secs. 1748, 1754, 1757, 1759 a, 1760, 1775; Laws of 1899, chaps. 100, 198; Laws of 1903, chap. 12; Laws of 1905, chap. 382).

*N. M. T. S. Co. No. 2 v. Bishop*, 103 Wis. 492; 79 N. W. 785; *Marvin v. Anderson*, 111 Wis. 387; 87 N. W. 226; *Grabner v. Post*, 119 Wis. 392; 96 N. W. 783.

5. *Procuring the Charter*. — The articles of association duly signed and acknowledged, or a true copy thereof, verified as such by the affidavits of two of the signers thereof, must be first filed in the office of the Secretary of State. A like verified copy and certificate of the Secretary of State showing the date when the articles were filed and accepted, must within thirty days thereafter be recorded by the register of deeds of the county where the corporation is located. The register of deeds must forthwith transmit to the Secretary of State a certificate stating the time when such copy was recorded, for which he shall receive a fee of twenty-five cents. Upon receipt of such certificate the Secretary of State shall issue a certificate of incorporation (Laws of 1905, chap. 507). No corporation shall have a legal existence until such articles have been so left for record. The organization tax must be paid to the Secretary of State at the time the articles are presented to him for filing (R. S., sec. 1773, as amended by chap. 238, Session Laws of 1901). Business cannot be commenced until one-half of the capital stock is subscribed and twenty per cent paid in (R. S., sec. 1773).

*Attorney-General v. Company*, 35 Wis. 425; *B. P. Co. v. Rose et al*, 95 Wis. 145; 70 N. W. 302; *Slocum v. Head*, 105 Wis. 431; 81 N. W. 673.

6. *Corporate Indebtedness*. — Bonds can only be issued for money, labor, or property estimated at its true money value, equal to seventy-five per cent of the par value thereof (R. S., sec. 1753). There is no statutory limitation upon the amount of corporate indebtedness.

7. *Organization Tax*. — For filing articles of beet sugar or dairy companies, \$10; for filing articles of companies formed for the purpose of mining, smelting, and owning mines and minerals in the State of Wisconsin, \$25, if the capitalization is \$25,000 or less, and \$1 for each additional \$1,000 capitalization up to \$150,000; and for all such corporations with a capitalization in excess of \$150,000, a fee of \$150. For all other business corporations the tax is \$25 if the capital stock is \$25,000 or less; if in excess of \$25,000, there is an additional tax of \$1 for each additional thousand dollars of capitalization

(R. S., sec. 1772, as amended by chap. 238, Session Laws of 1901; Laws of 1905, chap. 507).

Heath v. Company, 39 Wis. 146.

8. **Filing and Recording Fees.** — There are no fees for filing articles in the office of the Secretary of State other than the payment of the organization tax. For certified copy of articles of incorporation, the charge is 12 cents per folio, and 25 cents for certificate; for filing amendments, \$10; for recording certificate in the local county office, 10 cents per folio of one hundred words.

9. **Commencing Business.** — A corporation cannot transact business except with its members, until one-half of the authorized capital stock is subscribed, and twenty per cent thereof actually paid in (R. S., sec. 1773). Business must be commenced within one year after articles are filed (R. S., sec. 1763).

10. **Organization Meeting.** — Must be held within the State. It cannot be held until one-half of the capital stock has been subscribed (R. S., sec. 1773). Until organization the incorporators have by statute direction of the affairs of the corporation (Id.).

Heath v. Company, 39 Wis. 146.

11. **Meetings of Stockholders and Directors.** — Stockholders' meetings must be held within the State (R. S., sec. 1762). Directors' meetings may be held without the State if the by-laws so provide (R. S., 1776).

12. **Directors' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three directors, all of whom must be stockholders (R. S., sec. 1772, sub. 4, sec. 1776). There are no residential requirements.

*b. Liabilities.* — Directors are liable for illegal declaration of dividends and for transacting business before one-half of the capital stock is subscribed for, and twenty per cent actually paid in (R. S., secs. 1765, 1773; also for failure to make reports or refusing to allow inspection of books and accounts (Laws of 1905, chap. 347).

Gores v. Day, 99 Wis. 276; 74 N. W. 787.

13. **Stockholders' Liabilities.** — Stockholders authorizing the transaction of business before half of its authorized capital is subscribed and twenty per cent paid in, are liable for debts of the corporation incurred prior thereto (R. S., secs. 1755, 1756, 1773). They are also personally liable to the amount of the stock held by them for wages due clerks, servants, and laborers, for services performed for a period not exceeding six months in length (R. S., sec. 1769). They are also liable for the debts of the corporation to the extent of their unpaid stock subscriptions (R. S., sec. 1756). They are also liable to existing creditors to the extent of any diminution of capital stock (R. S., sec. 1755; see also Laws of 1901, chap. 129).

Sleeper v. Goodwin, 67 Wis. 577; 31 N. W. 335; Clokus v. Company, 92 Wis. 325; 66 N. W. 398.

14. **Stock Certificates.** — Certificates are ordinarily signed by the president and secretary (R. S., sec. 1751).

15. **Preferred Stock.** — Provisions may be made for preferred stock either in the charter or by unanimous vote of the stockholders at any time thereafter (R. S., sec. 1759 a; Laws of 1903, chap. 109).

16. **Payment of Capital Stock.** — Stock can be issued only for money, labor, or property estimated at its true money value, equal to the par value thereof. An exception is made in the case of stocks listed on the stock ex-

changes of New York, Chicago, Boston, and Philadelphia (R. S., sec. 1753; Laws of 1899, chap. 193). All fictitious increase of the capital stock is void.

*First Ave. Land Co. v. Parker*, 111 Wis. 1; 86 N. W. 604; *Shaw v. Gilbert*, 111 Wis. 165; 86 N. W. 188.

**17. Books.** — Stock books and books of account must be kept by the corporation at its principal office in the State (R. S., secs. 1750, 1757). The former are open to the inspection of stockholders and creditors (Laws of 1905, chap. 347).

**18. Office and Agent.** — Every business corporation must have its principal office in the State, and its managing officer or superintendent shall also reside therein (R. S., sec. 1750).

**19. Reports.** — Must within ten days after election of its officers file in office of register of deeds of county in which the corporation is located, and where its articles of incorporation are recorded, a list containing name of its president, vice-president, if any, secretary, cashier, or managing agent, upon whom service of process may be made (R. S., sec. 1775 b; Laws of 1905, chap. 347); must also in January of each year file with the Secretary of State detailed reports of their financial conditions and business (Laws of 1905, chap. 507).

**20. Anti-Trust Statute.** — There is a rather stringent anti-trust statute in force in Wisconsin. (See R. S., secs. 1747 e, f, g, 1791 j, k, l; Laws of 1905, chaps. 506, 507).

**21. Annual License Tax.** — There is no annual license tax.

**22. Statutory Grounds for Forfeiture of Charter.** — The charter may be forfeited for failing to keep an office and a managing officer or superintendent within the State (R. S., sec. 1750); for entering into illegal trusts (sec. 1791 j, k, l; Laws of 1905, chap. 507); also where charter is procured upon some fraudulent suggestion or enactment (R. S., secs. 8240, 8241). If a corporation remains insolvent or neglects to pay its debts or suspends its ordinary business for one year, it is deemed to have surrendered its charter, and shall be adjudged to be dissolved (R. S., sec. 1763).

*Phillips v. Albany*, 28 Wis. 340; *State ex rel. Cornish v. Tuttle*, 53 Wis. 45; 9 N. W. 791; *Attorney-General v. Company*, 93 Wis. 604; 67 N. W. 1138; *Harrigan v. Gilchrist*, 121 Wis. 127; 99 N. W. 901.

**23. Amendments.** — Any corporation may at any meeting of the stockholders, by a vote of at least the owners of two-thirds thereof unless a greater vote shall be required in its articles, amend the same so as to modify its business or purposes, change its name or location, increase or decrease its capital stock, change its officers or the number of directors, or provide anything which might have been originally provided for in such articles. Such amendment shall be adopted only in accordance with the articles of organization, which shall be therein prescribed. Duplicate copies of such amendment must be prepared with a certificate thereto attached signed by the president and secretary and sealed with the corporate seal, stating the fact and the date of the adoption of such amendment, the total number of shares voting in favor of such amendment, and that such copy is a true copy of the original. These are then forwarded to the Secretary of State, one to be filed by him and the other copy to be returned with his certificate attached to the register of deeds, who must record the same within thirty days after filing with the Secretary of State. The register of deeds then transmits to the Secretary of State a certificate stating time when such amendment was recorded in his office.

Upon receipt of such certificate the Secretary of State issues a certificate of amendment (Laws of 1905, chap. 507).

Whenever the corporate name shall be changed, the secretary shall publish a notice thereof in a newspaper published at or nearest the place of location of such corporation for three weeks. No change of location of any such corporation if beyond the limits of the county shall be valid until the articles of organization be amended and thereafter shall have been recorded in the office of the register of deeds of the county to which the same shall be changed (Laws of 1901, chap. 238; see also R. S., secs. 1774, 1790).

*Wood v. Association*, 63 Wis. 9; 22 N. W. 756.

**24. Dissolution.**—Corporation may be dissolved by two-thirds vote of capital stock, at a meeting called for the purpose (R. S., sec. 1789). The charter may also be surrendered before organization (R. S., sec. 1773; as amended by Laws of 1905, chap. 507).

*Hinckley et al. v. Pfister et al.*, 83 Wis. 64; 33 N. W. 21.

**25. Extension of Corporate Existence.**—There is no provision for extension of corporate existence.

**26. Foreign Corporations.**—Foreign corporations must file a certified copy of articles of incorporation in the office of the Secretary of State, accompanied by a sworn statement of an officer of the corporation stating the name of such corporation and location without and within the State; names and addresses of its officers, and name and address of agent within the State; amount of capital stock paid in; nature of business to be transacted within the State; proportion of capital stock represented by property within the State, etc. The Secretary of State must be appointed agent of the corporation for the acceptance of service of process. The certificate must also state when the corporation was authorized to do business in the State where incorporated, and that it will comply with all the laws of the State relative to foreign corporations. An initial license tax is exacted of \$25 and \$1 for every thousand dollars of its capital in excess of \$25,000 employed within the State. Annual reports must be filed in January of each year. A fee of \$2 is required for filing this report (Laws of 1905, chap. 506). An anti-trust affidavit must be filed at the time application for permit is made (Laws of 1905, chap. 506; R. S., sec. 1770 a and b, as amended; Laws of 1901, chaps. 351, 399, and 434, sec. 1).

*State ex rel. Drake v. Doyle*, 40 Wis. 175; *Ashland Lumber Co. v. Detroit Salt Co.*, 114 Wis. 66; 89 N. W. 904; *D. G. Co. v. Company*, 187 U. S. 611; 23 Sup. Ct. 206; *C. T. T. Co. v. Bashford*, (Wis.) 97 N. W. 940.

## WYOMING.

(The references below are to the Revised Statutes of Wyoming, 1899, unless otherwise stated.)

**1. Statutes under which Business Corporations may incorporate.**—The Business Corporation Act is found in Revised Statutes of Wyoming, 1899, secs. 3029–3079, 3255–3270. (See also Laws of 1901, chap. 83.) Under it corporations may be formed for carrying on any kind of manufacturing, mining, chemical, merchandising, or mechanical business, constructing wagon roads, railroads, telegraph lines, digging ditches, building flumes, mining tunnels, dealing in real estate or carrying on any business designed to aid in the industrial or productive interests of the country.

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**2. Incorporators.** — Three or more. No residential requirements (R. S., sec. 3029).

*Durlacher v. Frazer*, 8 Wy. 58; 55 Pac. 306.

**3. Contents of the Certificate of Incorporation.** — The certificate must set forth:

*a. Name.* — (Similarity of names not expressly forbidden by statute, but Secretary of State will not allow the use of any name already adopted by an existing domestic corporation.)

*b. Purposes.* — Object for which the company is formed. Under the Constitution (Art. X. sec. 6) no corporation can have power to transact more than one general line or department of business, which shall be distinctly specified in its charter of incorporation.

*c. Capital Stock.* — Amount thereof (unlimited by law). If preferred stock is to be issued, this must be set forth (R. S., sec. 3042).

*d. Duration.* — Term of existence not to exceed fifty years.

*e. Number of Shares.* — Number and par value of shares (par value may be any amount).

*f. Trustees.* — Number and names of the board for the first year.

*g. Domiciliary Office.* — Name of the town and county in which the operations of the company shall be carried on. More than one locality may be named if desired. If it is to transact business outside of the State, this must also be set forth (R. S., secs. 3029, 3033, 3034).

*h.* If trustees are to adopt by-laws, provision therefor must be made in the certificate.

**4. Statutory Powers.** — In addition to a statutory enumeration of the common law powers, the law provides for the following additional powers: To hold stock in such other corporations as are subsidiary to and contribute to the objects and purposes of the corporation; to issue preferred stock; to purchase mines, manufactories, and other appropriate property in exchange for capital stock; to vote by proxy; mining companies may construct and operate railways, tramways, and wagon roads for their own particular purposes; to transact business outside of the State (R. S., secs. 3032, 3034, 3035, 3040, 3041, 3046, 3059, 3078, 3079).

**5. Procuring the Charter.** — The practice upon incorporation is for the incorporators to make, sign, and acknowledge duplicate certificates of incorporation, one of which must be filed and recorded in the office of the county clerk of the county wherein the business of the company is to be carried on, and the other in the office of the Secretary of State. All corporations must, within thirty days after the filing of its articles of incorporation with the Secretary of State, cause to be published in a newspaper of general circulation a notice of its incorporation. Such notice shall contain the corporate name of the company, the object for which the company shall be formed, the amount of the capital stock of the company, the term of its existence, the number of shares of which the said stock shall consist, the number of trustees, and the names of those who shall manage the business of the company for the first year, the name of the town and county in which the operation of said company shall be carried on, the location (by town, city, giving the street number if any there be) of its principal office within the State, and the name of the agent in charge thereof. Such notice shall be published three times in such newspaper, for which a charge of \$5 shall be the legal rate for the publication of the three notices. The corporation

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must within said thirty days file in the office of the Secretary of State the publishers' proof of such publication and receipt for same, and pay to the Secretary of State for filing and indexing such proof (Laws of 1905, chap. 13.)

6. **Corporate Indebtedness.** — The indebtedness shall at no time exceed amount of the capital stock (R. S., secs. 3049, 3053).

7. **Organization Tax.** — Capital stock not exceeding \$5,000, \$5; over \$5,000 and not exceeding \$100,000, \$10; over \$100,000, \$10, and 5 cents additional for each \$1,000 in excess of \$100,000 (sec. 3030).

8. **Filing and Recording Fees.** — The payment of the organization tax includes the filing and recording fees in the office of the Secretary of State. The latter's fee for filing proof of publication of charter is \$1; for certified copy of the articles, 15 cents per folio of one hundred words for copy and \$1 for certificate and seal; for filing appointment of agent, \$2.50; for filing certificate of full-paid stock in the office of the county clerk, the fee averages \$1.20. The average fee for filing and recording certificate of incorporation in the county clerk's office is \$2.

9. **Commencing Business.** — Within ninety days after incorporation there must be filed in the office of the Secretary of State a certificate designating a statutory agent and an office for service of process (Laws of 1903, chap. 53).

10. **Organization Meeting.** — Should be held within the State (secs. 3035, 3036).

11. **Meetings of Stockholders and Directors.** — The act does not authorize meetings of stockholders to be held without the State. Directors' meetings may be held wherever the by-laws prescribe (R. S., secs. 3035, 3036).

12. **Trustees' Qualifications and Liabilities.** *a. Qualifications.* — There must be at least three and not more than nine trustees. All must be stockholders. There are no residential requirements (R. S., sec. 3035).

*b. Liabilities.* — Trustees are personally liable for payment of corporate debts, where they participate in an illegal declaration of a dividend or in the creation of corporate indebtedness in excess of the capital stock (R. S., secs. 3048, 3049).

13. **Stockholders' Liabilities.** — Stockholders are only liable to creditors for their unpaid stock subscriptions (R. S., sec. 3045).

14. **Stock Certificates.** — Must be signed by such officers as the by-laws prescribe.

15. **Preferred Stock.** — May be provided for in the certificate of incorporation, or may be issued thereafter by the unanimous consent of all the stockholders (R. S., secs. 3041, 3042).

16. **Payment of Capital Stock.** — Capital stock may be issued in exchange for mines, manufactories, and other necessary property to the amount of the value thereof. The act specifically provides that stock so issued shall be taken to be full stock, and the holders thereof shall not be liable thereon either to the corporation or to creditors (R. S., sec. 3046). Within thirty days after the payment of the last instalment of capital stock the president and a majority of the trustees must record in the office of the register of deeds of the county where the principal business is carried on, a certificate stating the amount of the capital so fixed and paid in (R. S., sec. 3047).

17. **Books.** — There is no provision as to what books must be kept other than the stock book (R. S., sec. 3055). Fifteen per cent of the stockholders

may demand a statement of the company's affairs from the treasurer (R. S., sec. 3057).

18. **Office.**— The corporation must maintain an office within the State (R. S., secs. 3029, 3033, 3034).

19. **Reports.**— There are no annual reports to be made. Statement of conditions of corporate affairs must be published by treasurer on written request of fifteen per cent of stockholders (R. S., sec. 3057).

20. **Anti-Trust Statute.**— There is no anti-trust statute in force in Wyoming. The Constitution, however (Art. X. sec. 8), forbids consolidation or combination to prevent competition, etc.

21. **Statutory Grounds for Forfeiture of Charter.**— The charter may be forfeited for non-user and misuser of its corporate franchises and privileges (R. S., sec. 4214); also for failing to file certificate of agent and place of business (Laws of 1903, chap. 53) or to publish articles as required by law (Laws of 1905, chap. 13).

22. **Amendments.**— Any corporation or company formed prior to February 13, 1890, either by special act or under the general law, and now existing, or any company which may be formed under this title, may increase or diminish its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in sec. 3029, and may also change its corporate name, subject to the provisions and liabilities of this chapter. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital, and any existing company heretofore formed under the general law or any special act, may come under and avail itself of the privileges and provisions of this chapter by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties, and liabilities of this chapter (sec. 3053).

Whenever the owner or owners of a majority of the shares of the capital stock of any company shall desire to call a meeting of stockholders, for the purpose of enabling the company to avail itself of the privileges of this chapter, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, or changing its name, such owner or owners shall make application in writing to the president or other chief officer of the company for the time being, to call a meeting of the stockholders of the company, which application shall state the purpose or purposes for which such meeting is desired. It shall thereupon be the duty of the officer of the company to whom such application is made to publish a notice to be signed by him in a newspaper in the county wherein is situated the principal office of the company in this State, if any shall be published therein, at least four successive weeks, and to deposit a written or printed copy thereof in the post-office addressed to each stockholder at his usual place of residence, at least fifteen days previous to the day fixed for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it is proposed to increase or diminish the capital stock, and the business to which the company would be extended or changed, and stating one or more names proposed for a change as the case may be, and a vote of at least two-thirds of all the shares of the stock lawfully

issued and outstanding shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business, or change of its name as aforesaid, or to enable the company to avail itself of the provisions of the chapter.

Whenever the president or other chief officer of a company shall receive an application as aforesaid, he shall file the same with the secretary or other person having the custody of the stock books of such company; and it shall be the duty of the person having the custody of such stock books immediately to furnish the president or other chief officer of the company for the time being with a list of the stockholders of the company, with the usual place of residence of each stockholder, at the time such application is received for filing, and the notices by mail herein provided for shall be sent to the stockholders as shown by the books of the company at the time said application is received for filing by the secretary or other person having charge of the stock books and all subsequent holders and owners of any of the stock of such company shall be chargeable with notice of such application, and the proceedings thereunder from the time the same is received by the secretary or other person, as aforesaid, for filing, without notice other than by publication as aforesaid.

If at the time and place specified in the notice provided for in the preceding sections of this chapter, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock lawfully issued and outstanding by the corporation, they shall organize by choosing one of the stockholders chairman of the meeting and also another stockholder for secretary, and proceed to a vote of those present in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of the votes have been given in favor of increasing or diminishing the amount of capital stock, of extending or changing the business or name of the corporation, or for availing itself of the privileges and provisions of this chapter, a certificate of the proceedings, showing compliance with the provisions of this chapter, the amount of the capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital shall be increased or diminished, shall be made out, signed and verified by the affidavits of the chairman and secretary of said stockholders' meeting, and such certificates shall also be acknowledged by such chairman and secretary, and filed and recorded as required by the first section of this chapter, and when so filed and recorded the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and business extended or changed or corporate name changed, as aforesaid, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this chapter as the case may be; provided, that when only the corporate name is changed the said certificate may show compliance with the provisions of this chapter respecting the change of name, and also state the original name and the new name; provided, further, that such change of name shall not in any manner affect suits pending in which any such corporation shall be a party, nor shall such change affect causes of action nor the liabilities, nor vested and accrued rights and privileges of such corporation, nor the rights of persons in any particular, and upon the filing of any such certificate such corporation shall cause to be published in some newspaper in or nearest the county in which its principal office is located, a notice of such change of name or change of organization for four successive weeks (secs. 3054-3056).

All corporations have the power to change the number of their trustees,



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provided such change may be made in the manner that is by law provided for changing the amount of the capital stock as above stated.

23. **Annual License Tax.** — There is no annual license tax.

24. **Extension of Corporate Existence.** — No provisions for this in the act.

25. **Dissolution.** — By a termination of its period of existence ; and voluntarily by a two-thirds vote of the stockholders, whereupon the trustees become trustees for the creditors and stockholders (R. S., secs. 3255-3264 inclusive).

*Inter. Trust Co. v. Company*, 3 Wy. 803 ; 31 Pac. 408.

26. **Foreign Corporations.** — Must file with the Secretary of State and register of deeds copy of charter, or, if incorporated under general law, copy of certificate of incorporation and of such incorporation law, and appointment of agent upon whom service of process may be made. They must pay same tax for filing certificate as is required of domestic corporations. No annual license fee and no reports to make (R. S., secs. 3265-3270 inclusive). They must also accept the provisions of the Wyoming Constitution (R. S., sec. 3058, see also Laws of 1901, chap. 83).

## SUPPLEMENT TO PART II.

### DOMINION OF CANADA.

1. **Capital Stock.** — May be any amount. Par value of shares may be any amount.

2. **Duration.** — Charters are all of perpetual duration.

3. **Application for Charter Patent.** — Must set forth: Corporate name; purposes ; location of business in Canada ; amount of capital stock ; number of shares and par value of each ; name, address, and business of each incorporator ; names of provisional directors from among the incorporators ; amount of subscriptions and amount paid thereon by each incorporator, how paid, and how held for the company.

4. **Commencing Business.** — A notice giving short particulars of the company must first be published in the Canada Gazette. The application for letters patent may be presented one month after expiration of such notice, and must be signed by at least five persons and filed with the Secretary of State, who must issue letters patent to the company before it can commence business. Application is accompanied by an agreement in duplicate under seal, between the incorporators, giving name of company, capital stock, shares and value of each, and covenanting to subscribe and take the respective amount of stock set opposite their names. No definite amount need be subscribed or paid in before obtaining charter. Before commencing business ten per cent of the authorized capital stock must be subscribed and paid in. Notice of granting charter is published twice in the Gazette.

5. **Payment of Subscription.** — May be made in money or property.

6. **Cost of Incorporating.** — Organization fees are : For capitalization less than \$20,000, \$50 ; over that and less than \$50,000, \$150 ; to less than \$100,000, \$200 ; to less than \$150,000, \$225 ; to less than \$200,000, \$250 ; to less than \$300,000, \$300 ; to less than \$400,000, \$325 ; to less than \$500,000, \$350 ; to less than \$600,000, \$375 ; to less than \$700,000, \$400 ; to less than

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\$800,000, \$425; to less than \$900,000, \$450; to less than \$1,000,000, \$475; when \$1,000,000, \$500; for every additional million dollars or part thereof, \$100. For increase of capitalization, fee is as above, but on increase only. Publication of notice, \$8 to \$10.

7. **Annual License Fee.** — There are no annual license fees exacted by the Dominion Government.

8. **Amendments.** — Amendments to charters can be obtained by supplementary letters patent on petition to the Secretary of State when authorized by a resolution of two-thirds of the subscribed stock.

9. **Incorporators.** — Must be at least five, with no restrictions as to sex, nationality, or residence.

10. **Directors.** — Must be not less than three and not more than fifteen. They must be stockholders. No restrictions as to residence.

11. **Meetings.** — Stockholders' meetings must be held within the Dominion, but directors' meetings need not be.

12. **Books.** — The books of the company must be kept at the head office.

13. **Reports.** — Upon the written request of Secretary of State, a return must be made to him of amount of capital of the company; number of shares taken from the commencement of the company; amount of calls made; amount of calls received; amount of calls unpaid; amount of shares forfeited; names, addresses, and occupations of persons who have ceased to be members within the preceding twelve months, and number of shares held by each.

14. **Office and Agent.** — Must have designated office in the Dominion of Canada. It may have a branch office located outside of the Dominion.

15. **Liabilities.** — Stockholders are liable only for the unpaid balance of their shares.

16. **Dissolution.** — The company may dissolve by a resolution of the shareholders passed at a special meeting.

17. **Foreign Corporations.** — Are governed by the Dominion and the respective Provincial laws.

## MANITOBA.

Under the laws of the Province of Manitoba, the requirements in connection with incorporation and management are, succinctly stated, substantially as follows:

A petition, signed and acknowledged by at least three applicants, must be made to the Lieutenant-Governor through the Provincial Secretary, showing: Corporate name; objects; place or places in Manitoba where business is to be carried on, specially mentioning one of such places as the chief place of business; amount of capital stock; number of shares and amount of each; names with address and calling of each applicant, with special mention of names of not less than three nor more than nine of them who will be first directors; amount of stock taken by each applicant, and amount paid in thereon, and whether paid in cash or property, or how otherwise. No advertisement of intention to incorporate is necessary. The fees for incorporating, paid to the government, range from \$15 where capitalization does not exceed \$5,000, to \$200 for one million capitalization; all over that, \$250. No payment on stock is necessary at time of incorporating. Stock may be paid for in money or property. The directory is composed of at least three and not

over nine members. Shareholders may be residents in or citizens or subjects of any country or State. Before commencing business ten per cent of the capital stock must be subscribed and ten per cent of subscriptions paid up. No residential requirements as to incorporators, directors, or stockholders.

**Foreign Corporations.** — Must take out a license to do business in the Province, by filing a petition, with certified copy of the act of incorporation; a copy of the last financial statement of the company's proper officer; an affidavit verifying that the company is entitled to do business; and an attorney resident in the province must be appointed to represent the company in all suits and actions. A fee of \$150 must be paid to the government, regardless of amount of capitalization. There are also fees to be paid under the Corporation Taxation Act, according to the character and the amount of its capital stock.

## PHILIPPINES.

The Philippine Civil Commission has now under advisement and preparation a local corporation law which will probably be enacted early in 1905. For a foreign corporation to do business in the Philippines it is necessary to comply with the provisions of the Code of Commerce (Arts. XV., XVII., XXI.). The requirements stated therein, so far as they relate to obtaining a permit by foreign corporations to do business in the Philippine Islands, are as follows:

(1) The corporation must be a commercial association within the meaning of the Code of Commerce of the Philippine Islands, and as such be subject to its provisions.

(2) That by reason of its domicile in the United States it stands in the same relation to the laws of these islands as did Spain before their cession. (See also Art. XV. of the Code of Commerce.) Art. XXI. of the Code of Commerce provides what foreign corporations must do who desire to establish themselves or create business in the Philippine Islands. Art. XVII. of Code of Commerce provides how they shall be registered.

It is necessary to have a Spanish consular certificate for their establishment and authorization.

The Register, known as the Commercial Register, at Manila, consists of two independent books of record in which are recorded private merchants and associations.

Art. XXI. of Code of Commerce provides that "On the sheet of the record of each merchant there shall be entered:

- "1. Name, firm name or title.
- "2. The kind of commerce or transaction engaged in.
- "3. The date on which business is to begin or was begun.
- "4. The domicile, with a statement of the branches which may have been established.

"5. The articles constituting a commercial association, whatsoever may be its object or appellation, as well as the instruments modifying, rescinding, or dissolving the said association."

In the case of foreign corporations domiciled in countries not using the notarial system, the necessary papers to be available here must be executed and authenticated according to the provisions of the insular laws, and they will not be recognized here unless in strict compliance with such laws.

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For the registration of a company organized in the United States to do business here there would be required:

(I) The several acts of the legislature which constitute the charter, each of which must have attached the ordinary certificate of the Secretary of State under his official seal.

(II) The evidence of the organization of the company under its charter, the best attainable, such as would be necessary to prove the facts in the State courts. The best evidence would probably be the documents showing the opening of books for subscription, the names of subscribers and the proceedings thereat, the issue of shares, the filing of certificate of amount paid up, and all the formal papers and proceedings required in organizing under the charter and under the provisions of the corporation and laws applicable under the terms of the charter.

Before the cession of these islands this certificate, for use in Spanish colonies, to register a corporation domiciled in Spain, was given by a Spanish minister. By analogy, this now being a United States colony, the certificate would be given by the similar Member of Cabinet of the United States, but owing to the difference of political organization, that officer is not vested with power in such cases.

So far as we have been able to ascertain no provision has been made for the substitution of any authority in the United States to supply this certificate, and that is the reason why the documents and facts showing the establishment and authorization should be set out in such manner as to enable some proper officer in the domiciliary State to make the certificate which in such case the Secretary of War could authenticate as entitled to full faith and credit.

(III) The by-laws of the company and all changes therein.

(IV) All additional issues of stock, and all the matters embraced within Art. XXI. prescribing what is necessary to be recorded. (See also Code of Civil Procedure, secs. 299, 301, 303, 313.)

In addition to this a power of attorney conferring upon a resident agent such power as is desired, is necessary. It must be in Spanish and carefully drawn and authenticated, and it must expressly confer power to register the company in the Commercial Register at Manila. The power must contain or have annexed thereto by the notary the resolution of the board of directors authorizing the execution of the power by the officers appearing before the notary for that purpose.

All documents must be translated from English into Spanish before they can be registered, and the cost is \$1, United States currency, per page for translation. The registry fees are nominal.

## PORTO RICO.

1. **Capital Stock.** — May be any amount not less than \$2,000.
2. **Duration.** — Any number of years.
3. **Certificate of Incorporation.** — Must state: Name; location of principal office in Porto Rico; purposes; amount of capital stock; number of shares, and par value of each; amount of paid in capital (not less than \$1,000), with which it will commence business; names and addresses of incorporators; number of shares subscribed by and amount paid in by each. Articles must

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be signed and acknowledged by the incorporators, and filed in office of Secretary of Porto Rico.

4. **Commencing Business.** — At least \$1,000 of capital stock must be paid in before commencing business.

5. **Cost of Incorporating.** — Simply the legal fees to Secretary of the Territory for filing and recording articles and issuing certificate of incorporation.

6. **Annual License Fee.** — There is none.

7. **Amendments.** — Articles may be amended in all respects, upon resolution of board of directors, and vote of two-thirds of the stock.

8. **Incorporators.** — Must be three or more persons of lawful age. No residential requirements.

9. **Directors.** — Must be at least three, one of whom must reside in Porto Rico.

10. **Meetings.** — Must be held at the principal office in Porto Rico.

11. **Reports.** — No reports are required to be made.

12. **Books.** — Stock and transfer books, open to inspection of shareholders and others interested, must be kept at the principal office; and ten days before election of directors or officers a list of stockholders entitled to vote must be made and be open to inspection of stockholders.

13. **Office and Agent.** — A principal office must be maintained in Porto Rico, with an agent in charge.

14. **Liabilities.** — Stockholders are liable only for amount unpaid on stock.

15. **Dissolution.** — Voluntary dissolution may be had by resolution of the directors, and by written consent of two-thirds in interest of stockholders.

16. **Foreign Corporations.** — There seems to be no law pertaining to Porto Rico regulating foreign corporations.

# PART III.

## FORMS AND PRECEDENTS.

### SPECIFIC OBJECT CLAUSES.

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### FORM 1. — ACCOUNTANTS.

To open, take charge of, examine, inspect, and audit books of account; to certify to the results of such examination, inspection, and audit, and to guaranty the correctness of the same. To furnish facilities to individuals, firms, and corporations for opening sets of books of account and for auditing and balancing the same. (See p. 627.)

### FORM 2. — ACQUISITION OF EXISTING BUSINESS.

To purchase, acquire, and take over the business and property, both real and personal, name and assets of every nature and description of the business now being carried on by \_\_\_\_\_ in the city of \_\_\_\_\_ State of \_\_\_\_\_.

### FORM 3. — ADVERTISING.

To carry on a general advertising business in all its various branches; to solicit and contract for and give publicity to all kinds of advertising; to prepare, manufacture, construct, and arrange for advertising devices, advertisements, and novelties. To erect, construct, purchase, lease, or otherwise acquire fences, bill-boards, sign-boards, buildings, and other structures suitable for advertising purposes. To do a general bill-posting, sign-tacking, circularizing, and distributing business of every kind appertaining to any and all kinds of advertising.

### FORM 4. — AGRICULTURAL IMPLEMENTS.

To carry on the business of manufacturers and dealers in agricultural implements; to manufacture, buy, sell, export, import, and generally deal in harvesters, binders, reapers, mowers, harrows, hay racks, headers and shredders, cutters, binding machines, threshers, drillers, seeders, and agricultural tools and implements of all kinds, and such other goods, wares, and merchandise as are usually manufactured or sold, exported or imported, and dealt in by manufacturers and dealers in a similar line of business.

### FORM 5. — AIR BRAKES.

To carry on the business of manufacturers and dealers in air or pneumatic brakes and braking devices and appliances of every description; to manufacture, buy, sell, export, import, and generally deal in air or pneumatic braking devices and appliances, car tracks, railway appliances and supplies, machinery and appliances of every description. Also, to manufacture, buy, sell, export, import, and generally deal in compressed air machinery and parts, and to acquire by purchase or otherwise inventions, patents, licenses, and patent rights, and such brakes, braking devices, railway machinery and appliances and compressed air machinery and apparatus as may be manufactured, bought, sold, imported, exported, and dealt in by manufacturers and dealers in a similar line of business.

## **FORMS AND PRECEDENTS.**

### **FORM 6. — AIR MOTORS.**

To manufacture, construct, purchase, or otherwise acquire, deal in, sell, hire, lease, use, repair, operate, and maintain machinery, engines, compressors, or motors, tools, devices operated by compressed air or other expansible fluids, apparatus and appliances of any and every character.

### **FORM 7. — AIR POWER.**

To manufacture, buy, sell, import, export, and generally deal in air compressors, machinery and apparatus useful or convenient for use in connection with the aforesaid business or any part thereof; to purchase or otherwise acquire, sell, lease, export, or import machinery, engines, trucks, and cars suitable for use in connection with the aforesaid line of business or any part thereof.

### **FORM 8. — ALUMINUM GOODS.**

To manufacture, buy, sell, export, import, and generally deal in aluminum goods, and such other goods, wares, and merchandise as are usually manufactured, bought, sold, exported, or imported and dealt in by manufacturers and dealers in a similar line of business. To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, and otherwise producing and dealing in aluminum and other products.

### **FORM 9. — AMMONIA.**

To prepare, distil, manufacture, buy, sell, and generally deal in ammonia and such other products as are usually distilled, manufactured, bought, sold, and dealt in by manufacturers and dealers in a similar line of business.

### **FORM 10. — AMMUNITION.**

To manufacture, buy, sell, export, import, and generally deal in gunpowder, shot, bullets, cartridges, shells, explosives, and such other goods, wares, and merchandise as are usually manufactured, bought, sold, exported, imported, and dealt in by dealers in a similar line of business.

### **FORM 11. — AMUSEMENT COMPANY.**

To build, buy, lease, or otherwise acquire, own, operate, and maintain merry-go-rounds, loop-the-loops, gravity and pleasure railways, aerial coasting swings, Ferris Wheels, and all other devices of a like nature calculated to offer amusement to the public and profit to the company. Also to manufacture, locate, buy, lease, or otherwise acquire, sell, and deal in scenery, stage appliances, theatre appliances, and other articles suitable for use on stage or in amusement enterprises, theatres, or other public places. Also to purchase, own, lease, or otherwise acquire, license, or sell plays, operas, songs, musical or dramatic manuscripts or copyrights whatsoever which may be used as a basis for the amusement or entertainment of persons in public or private places. To carry on the business of, and to do any and all things that may be ordinarily conducted by dramatic and operatic agents and managers of amusement enterprises of any kind, including the manufacture of appliances used in theatrical amusement enterprises. Also to conduct amusement enterprises of all kinds. To purchase, lease, or otherwise acquire, buy, sell, or otherwise dispose of lands and buildings for the erection, operation, and maintenance of theatres, opera houses, and amusement enterprises of every character, with suitable plants, machinery, lighting, and heating apparatus, and other appliances connected therewith.

### **FORM 12. — ANGORA GOATS.**

To carry on in all its various branches a general stock-raising farm and ranch business; particularly to buy, sell, breed, raise, or otherwise deal in Angora Goats and other domestic animals.



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### FORM 13. — ANIMAL FANCIERS.

To buy, sell, import, export, and generally deal in all kinds of animals, domestic or wild; and particularly to buy, sell, import, export, and deal in dogs, cats, goats, birds, and such other animals as are usually bought, sold, imported, and exported by dealers in a similar line of business.

### FORM 14. — APARTMENT HOUSES.

To erect, build, equip, operate, maintain, buy, and sell apartment houses; to supply electricity for lighting, heating, power, signalling, and other purposes. To construct, own, and operate electric telephone exchanges.

### FORM 15. — ARCHITECTS.

To conduct, manage, and carry on the businesses of architects and engineers in all or any of their respective branches, and also the development of real estate situate in the State of \_\_\_\_\_ or elsewhere; to make contracts for the preparation of plans or other drawings and specifications of buildings or parts of buildings of any kind and description; to superintend the construction thereof and to do any and all acts in the line of the businesses of architects and engineers which it may deem necessary, profitable, or desirable for the promotion of its business. To acquire by purchase or otherwise own, hold, buy, sell, convey, lease, mortgage, or encumber real estate including quarry lands or other property, personal or mixed. To survey, subdivide, plat, improve, and develop lands for purposes of sale or otherwise, and to do and perform all things needful and lawful for the development and improvement of the same for residence, trade, or business. To acquire to the same extent as natural persons and without limit as to amount, by purchase, lease, exchange, hire, or otherwise, lands, improved or unimproved, tenements, hereditaments, chattels, real or personal, or any interest therein; to erect and construct houses, buildings, and works of every description on any lands of the company or upon any other lands; to rebuild, enlarge, alter, or improve existing houses, buildings, or works thereon; to subdivide, improve, and develop lands for purposes of sale or otherwise; to convert and appropriate any such land into and for roads, streets, and other conveniences, and to do and perform all things needful and lawful for the development and improvement of the same, and generally to deal with and improve the property of the company and of other parties; to own, hold, and maintain any property acquired by the company; to sell, convey, lease, release, let, exchange, mortgage, or otherwise encumber or dispose of lands, houses, buildings, hereditaments, appurtenances, chattels, and other property of the company; to equip, furnish, conduct, operate, manage, lease, and maintain hotels, apartment houses, boarding houses, dwelling houses, sanitariums, warehouses, or any kind of building for dwelling, amusement, recreation, charitable, or religious purposes; to undertake or direct the management and sale of the property of the company, real and personal; to sell, assign, release, hold, or satisfy mortgages which may become the property of the company; to loan on bond or mortgage or otherwise, or to advance money to, and to enter into contracts and arrangements of all kinds with contractors, laborers, skilled or otherwise, builders, property owners, and others.

### FORM 16. — ASPHALT.

To mine, manufacture, produce, prepare, buy, sell, export, import, and generally deal in asphalt, cement, and such other products as are usually dealt in by dealers engaged in a similar line of business; to manufacture, produce, prepare, export, import, and deal in any product in the manufacture or composition of which asphalt or cement is used; to prospect for and locate lands suitable for clearing and mining all kinds of minerals, stone, and other products; also to enter into contracts for the paving, repairing, and improving of streets, alleys, and areas in and about public or private buildings or grounds.

**AUDITORS. See ACCOUNTANTS, FORM 1.**

## **FORMS AND PRECEDENTS.**

### **FORM 17. — AUTOMOBILES.**

To manufacture, buy, sell, import, export, and generally deal in all kinds of vehicles, engines, machines, or appliances for the generation of steam, electric, gasoline, or other power for the purpose of propelling cars, carriages, wagons, trucks, and vehicles of every kind and description; and also to manufacture, buy, sell, import, export, and generally deal in machinery of all kinds and such mechanical devices and engineering appliances as are generally manufactured, bought, sold, exported, imported, and dealt in by manufacturers, and dealers in a similar line of business.

### **FORM 18. — BAKERY.**

To carry on the business of bakers in all its various branches in the city of \_\_\_\_\_ and vicinity; to manufacture, make, purchase, sell, export, and import bread, crackers, biscuits, cake, sweetmeats, and confectionery of all kinds; also to manufacture, buy, sell, import, export, and generally deal in baking powders, yeasts, cream of tartar, and all other articles which may be necessary or conveniently used in connection with the aforementioned business or businesses.

### **FORM 19. — BAKING POWDER.**

To carry on the business of manufacturers and dealers in baking powder and its ingredients. To manufacture, buy, sell, export, import, and generally deal in baking powder and all the ingredients, whether chemical or otherwise which are or may be component parts of baking powder, and to manufacture, buy, sell, export, import, and generally deal in such other goods, wares and merchandise as are made or carried by manufacturers and dealers in a similar line of business.

### **FORM 20. — BALLOT BOXES.**

To manufacture, buy, sell, lease, export, import, and generally deal in articles commonly known as voting or ballot boxes, and particularly to purchase or otherwise acquire letters patent of the United States or of foreign countries governing the manufacture of such voting or ballot boxes, together with all extensions and renewals of the same.

### **FORM 21. — BANKING AND TRUST COMPANIES.**

To carry on a banking and trust company business and in connection therewith to discount bills, notes, and other evidences of debt, receive and pay out deposits with or without interest, receive on special deposit money or bullion or foreign coin, stocks, bonds, or other securities; to buy and sell foreign and domestic exchange, gold and silver bullion, foreign coins, bonds, stock, bills of exchange, notes, and other negotiable paper; to lend money on percentage, security or bonds, pledges of bonds, or other negotiable securities; to take and receive security by mortgage or otherwise upon property, real and personal; to invest money for individuals or corporations, and to act as Trustee for any purpose; to do any business and exercise any powers incident to the business of trust companies doing a banking business.

### **FORM 22. — BARREL MANUFACTURE.**

To manufacture, buy, sell, export, import, and generally deal in barrels and barrel heads, hogsheds and boxes made from wood or metal.

### **FORM 23. — BICYCLES.**

To carry on the business of manufacturers and dealers in bicycles and bicycle sundries; to manufacture, buy, sell, import, export, and generally deal in bicycles, motor cycles, bicycle saddles, bicycle parts, and bicycle sundries of all kinds.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### FORM 24. — BISCUIT COMPANY.

To prepare, manufacture, buy, sell, import, export, and generally deal in biscuits, cakes, crackers, pretzels, pastry and bread of all kinds, and in other food products. To manufacture, buy, sell, import, export, and generally deal in machinery for the making and baking of biscuits, cakes, crackers, pretzels, pastry, and bread.

### FORM 25. — BOOKS.

To carry on the business of booksellers, stationers, bookbinders, and engravers, lithographers, publishers, and manufacturers of inks and all articles and things of the same character as the foregoing or connected therewith.

### FORM 26. — BOOTS AND SHOES.

To carry on the business of manufacturers and dealers in boots, shoes, and footwear of every kind and description. To manufacture, buy, sell, import, export, and generally deal in boots, shoes, rubbers, soles, lasts, and all kinds of leather, rubber, or cloth goods. To make, manufacture, buy, sell, import, export and deal in machinery of all kinds for the manufacture of boots and shoes, rubbers, soles, lasts, and all kinds of leather, rubber, and cloth goods. To manufacture, buy, sell, export, import and generally deal in all kinds of blacking, polishes, varnishes, lasts, button hooks, fasteners, and such other articles of merchandise as are usually manufactured by manufacturers and dealers in a similar line of business.

### FORM 27. — BRANDIES.

To carry on the business of manufacturers, distillers, and dealers in brandies, wines, and liquors of every class and description. To manufacture, buy, sell, export, import, store, warehouse, and generally deal in brandies, wines, whiskey, malt liquors, gin, spirits, and beverages of all kinds, and their products and by-products of every nature whatsoever. To carry on the general business of distilling and rectifying brandies, wines, whiskey, and liquor, and the blending of gins and whiskeys of all classes and description, and generally deal in grain, sugar, molasses, and all liquors, used in connection with the operation of a distillery. To manufacture, buy, sell, import, and export machinery for the manufacture, distillation, and rectification of liquors of every class and description. To build, operate, and maintain warehouses, bonded or otherwise, and to do a general warehouse business. To issue, register, and certify warehouse receipts. To manufacture, buy, sell, and deal in ice.

### FORM 28. — BREEDERS.

To carry on the business of breeding, raising, training, buying, selling, importing, and exporting horses. To conduct any and all manner of business permitted at fair and race courses, and in general to do any and all things in accordance with law that may directly or indirectly be connected with the raising of horses. To keep careful lists of the most celebrated horses of all noted breeds, and their pedigree and distinguishing characteristics, and to publish from time to time every kind of information on such subjects of interest to horsemen. To buy, sell, raise, and handle live stock of all kinds and description.

### FORM 29. — BREWERY.

To prepare, brew, manufacture, export, import, buy, sell, make, and deal in beer, porter, ale, and all other classes and kinds of malt liquors. To manufacture, buy, sell, import, and export malt. To buy and sell grains of all kinds; to manufacture, buy, sell, and refine liquors of all kinds; to manufacture, buy, sell, and deal in ice. To build, operate, and maintain warehouses, and to do a general warehouse business. To manufacture, buy, sell, import, and export machinery for the manufacture, distillation, brewing, and treating of malt liquors.

## FORMS AND PRECEDENTS.

### FORM 30. — BRICK.

To manufacture for purposes of sale pressed brick, building brick, terra cotta, tile, roofing, vitrified, and other building materials which can be made from clay.

### FORM 31. — BRIDGE BUILDERS.

To manufacture, sell, export, and generally deal in bridges and structural work. To manufacture, buy, sell, export, and import steel, iron, tin, aluminum, and other metals. Also to manufacture, buy, sell, export, and import engines, boilers, machinery, plates, apparatus, tools, appliances, and materials useful or convenient for carrying on any of the several lines of business heretofore set forth.

### FORM 32. — BRONZE.

To manufacture, buy, sell, export, import, and generally deal in bronzes of all kinds, classes, and descriptions. Also to manufacture, prepare, buy, sell, export, import, and generally deal in silicon, aluminum, and all kinds of metals or metallic compounds suitable and convenient to be used or commonly used by dealers in bronzes.

### FORM 33. — BROOMS.

To carry on the business of manufacturers and dealers in brooms of all classes and descriptions; to manufacture, buy, sell, import, export, and generally deal in brooms, broom corn, broom hangers, binding twine, binding wire, and all other articles suitable for use in such manufacture; also to deal in such other goods, wares, and merchandise as are usually manufactured or dealt in by manufacturers and dealers in a similar line of business.

### FORM 34. — BRUSHES.

To manufacture, buy, sell, export, import, and generally deal in hair brushes, scrubbing brushes, nail brushes, electric brushes, brooms and dusters of all classes and descriptions. Also to manufacture, buy, sell, export, import, and generally deal in such other goods, wares, and merchandise as are commonly manufactured and dealt in by those engaged in a similar line of business.

### FORM 35. — BUILDING CONTRACTORS.

To engage generally in the business of contracting for, erecting, decorating, and furnishing thereof, buildings of every class and description. To engage generally in the business of builders, contractors, and dealers in lumber, stone, brick, cement, marble, plumbers' supplies, and all other kinds of building material.

### FORM 36. — BUTCHERS.

To carry on the business of wholesale and retail dealers in meat and meat products, and to operate in connection therewith slaughter-houses, stock yards, and live-stock farms and ranches; also to operate and maintain cold-storage warehouses, plants, and all buildings necessary or expedient for carrying on the aforesaid business.

### FORM 37. — BUTTONS.

To carry on the business of manufacturers and dealers in buttons of all kinds, classes, and descriptions; to manufacture, buy, sell, import, export, and generally deal in buttons and all products necessary or useful in the business of button manufacturing. To purchase or otherwise acquire letters patent of the United States or of foreign countries, together with all extensions or renewals of the same, covering the manufacture of buttons and button machinery; also to buy, manufacture, and keep in stock for purposes of sale such goods, wares, and merchandise as are usually manufactured by and dealt in by manufacturers and dealers in a similar line of business.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### FORM 38. — CAR BUILDERS.

To carry on the business of manufacturing, buying, leasing, or otherwise acquiring, equipping, constructing, altering, repairing, maintaining, operating, and selling steam, electric, or cable cars, and to manufacture, buy, lease, or otherwise acquire, construct, alter, repair, and sell all apparatus, appliances, devices, machinery, and materials for use in operating, constructing, or maintaining steam, electric, or cable cars, or used in constructing, operating or maintaining any line of railway, steam, or electric lines or otherwise, or the stations, terminals, or equipment thereof.

### FORM 39. — CARBON ENGINES.

To manufacture, buy, sell, import, export, and deal in carbon engines and all kinds of machinery, tools, and implements incidental to the development of new and useful mechanical devices, and to obtain letters patent thereupon; to acquire letters patent, domestic or foreign, for the right to construct machines upon which patents have already been issued and applied for.

### FORM 40. — CASH REGISTERS.

To manufacture, buy, sell, export, import, and generally deal in cash registers, check, slip, and automatic printing registers, autographic registers, weighing, adding, calculating and registering machines of all kinds, classes, and descriptions.

### FORM 41. — CATTLE.

To breed, raise, buy, sell, export, import, and deal in cattle, sheep, horses, and live stock of all classes and descriptions. To build, construct, buy, lease, or otherwise acquire, own, and maintain slaughter-houses. To carry on the business of butchers and packers; also to manufacture, buy, sell, and generally deal in all articles made from the carcasses of animals. To purchase, lease, or otherwise acquire farms and lands suitable for stock raising and agricultural business.

### FORM 42. — CEMENTS.

To manufacture, prepare, buy, sell, import, export, and deal in cement, Portland or otherwise, lime, limestone, and all kinds of plasters and artificial stone. To build, buy, lease, or otherwise acquire manufactories, plants, buildings, and warehouses suitable for the manufacture, selling, and storing of cement and other products of a similar nature. To manufacture and deal in such other goods, wares, and merchandise as are usually manufactured and dealt in by those engaged in a similar line of business.

### FORM 43. — CEREALS.

To buy, sell, import, export, and generally deal in all kinds of cereals and the manufactured products thereof. To grind material for cereals and the various products thereof. To erect, construct, own, purchase, lease, or otherwise acquire elevators, mills, granaries, and buildings for the storing, handling, manufacturing, and selling of grains and cereals, and the various products thereof. To carry on a general milling and manufacturing business in the preparation of grains, cereals, and other products for market, and to manufacture, buy, sell, import, export, and deal in milling, elevator, and all other machinery for the handling of grains and cereals and their various products and by-products.

### FORM 44. — CHEMICALS.

To manufacture, buy, sell, export, import, and generally deal in all kinds of chemicals, and to carry on the business of chemists, druggists, and manufacturers of, and dealers in pharmaceutical, medicinal, chemical, and other preparations, articles, compounds, pigments, drugs and druggists' sundries, chemical, surgical,

## FORMS AND PRECEDENTS.

and scientific apparatus and machinery. To analyze and refine when necessary all kinds of chemicals, medicines, and preparations. To apply for, obtain, register, purchase, or otherwise acquire, use, operate, sell, assign, or otherwise dispose of any and all trade marks, secret processes, trade names, distinctive marks, and all inventions, improvements, and processes used in connection with or secured under letters patent or otherwise, domestic or foreign, and other governmental grants or concessions, and to use and employ the same in connection with the purposes hereinbefore set forth.

### FORM 45. — CIGARS.

To carry on the business of manufacturers and dealers in cigars and tobacco. To manufacture, buy, sell, exchange, import, export, and generally deal in leaf tobacco, chewing tobacco, cigars, cigarettes, and cheroots; to plant, grow, and treat leaf tobacco, and to manufacture, sell, lease, or otherwise acquire machinery, tools, implements, and appliances incidental and necessary in the cultivation, care, and treatment of leaf tobacco, or in the manufacture of cheroots, chewing and smoking tobacco, cigars and cigarettes. To build, operate, maintain, lease, or otherwise acquire factories, warehouses, and buildings suitable for the caring, storing, preparation, and manufacture of tobacco and its several products.

### FORM 46. — CLOTHING MANUFACTURERS.

To manufacture, buy, sell, import, export, and generally deal in clothing and wearing apparel of every nature and description. To engage in manufacturing, buying, selling, importing, and exporting underwear and gentlemen's furnishing goods.

### FORM 47. — COAL.

To buy and sell anthracite, bituminous, semi-bituminous coal, lignite coal, and their products and by-products. To acquire by purchase, lease, or otherwise coal lands, shales, and properties, and to operate and maintain mines thereon. To engage in the business, both wholesale and retail, of dealers in coal, coke, wood, and fuel oil.

### FORM 48. — COAL BRIQUETTE.

To manufacture, buy, sell, deal in, and deal with coal briquettes; to mine, buy, sell, deal in and deal with coal and other minerals, and to manufacture and sell coke and its by-products; to acquire by purchase, lease, or otherwise coal mines, coal lands, coal properties, mineral and mining rights; to manufacture, purchase, or otherwise acquire, hold, own, mortgage, lease, assign, transfer, invest, deal in and deal with and trade in goods, wares, merchandise, and property of every class and description.

### FORM 49. — COAL TRANSPORTATION COMPANY.

To mine, buy, sell, import, export, and generally deal in anthracite, bituminous, and semi-bituminous coal; to act as agent and broker for coal and to make contracts with coal companies with reference to handling and selling their coal and on such terms as may be agreed upon. To buy, lease, build, and own sales-rooms, storerooms, storehouses, warehouses, docks, piers, and real estate necessary to the carrying on of such business. To carry on the business of engaging, receiving, transporting, and delivering coal and merchandise of all kinds upon freight or for hire between any port or ports of the United States and any foreign port or ports, or between any foreign port or ports and any port or ports of the United States; to engage in the business of chartering vessels therefor and operate vessels in such service. To act as agent for vessels employed in such service; to contract and arrange for the transportation of cargo to and from any of such ports by rail, boat, or otherwise from or to any inland or coastwise place or places. To build, buy, sell, charter, equip, operate, and own steamships, steamboats, sailing ships, coal barges, canal boats, and other property to be used in such business, trade, commerce, and navigation.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### FORM 50. — COFFEE.

To raise, cultivate, produce, export, import, treat, cure, ripen, polish, burn, roast, brown, buy, sell, and generally deal in coffees of every grade, character, and description. To acquire by purchase, lease, or otherwise lands and properties suitable for planting and raising coffee plants. To buy, sell, and generally deal in such other goods, wares, and merchandise as are usually dealt in by those engaged in a similar line of business.

### FORM 51. — COLD STORAGE.

To preserve in cold storage and generally deal in all kinds of food products of a perishable nature or otherwise. To manufacture, buy, sell, and deal in ice. To buy, sell, store, import, and export fruit, fish, butter, milk, and all kinds of food products, whether animal or vegetable. To operate and maintain stores, buildings, warehouses, depots, and wharves for the carrying on of any of the aforesaid lines of business.

### FORM 52. — COLONIZATION COMPANY.

To buy, sell, lease, or otherwise acquire lands and other property for the purpose of disposing of the same to settlers; to plant, grow, and cultivate tobacco, fruits, sugar, coffee, and all kinds of vegetables; to mine for gold, silver, copper, lead and all kinds of minerals; to manufacture marble, stone, brick, and building materials of a similar nature; to cut, manufacture, buy, sell, and deal in wood and lumber; to build, maintain, and operate hotels, stores, packing-houses, warehouses, elevators, saw-mills, flour-mills, dwellings, stations, and wharves; to raise, buy, sell, and deal in mules, sheep, and horses; to engage in the business of farmers and planters.

### FORM 53. — COMMERCIAL COMPANY. (See FORM 92.)

### FORM 54. — COMMISSION MERCHANTS.

To engage in the business of selling goods, wares, and merchandise as commission merchants, and as general selling agents; particularly to act as agents or brokers for the selling upon commission or otherwise of the following classes of property, to wit: (here insert description of property to be sold.)

### FORM 55. — CONFECTIONERY.

To purchase, manufacture, buy, sell, import, export, and deal in candy, confectionery, sugar, glucose, ices, chocolate, and chewing gum; to manufacture, purchase, or otherwise acquire, sell, import, export, and generally deal in such goods, wares, and merchandise as are ordinarily carried by manufacturers or dealers in a similar line of business.

### FORM 56. — CONSTRUCTION COMPANY.

To manufacture, buy, sell, or otherwise acquire, import, export, and generally deal in sheet iron, copper, tin, galvanized iron, cornices, skylights, smokestacks, water, gas, and electric works, wharves, roads, reservoirs, canals, factories, warehouses, and mills; to manufacture, buy, sell, import, export, and generally deal in iron, steel, manganese, copper, and other materials or alloy thereof, coke, gas, coal, lumber, and building materials or any article consisting or partly consisting of iron, steel, copper, and other materials, and any products thereof.

### FORM 57. — CONTRACTORS AND BUILDERS.

To construct, erect, equip, repair, and improve houses, buildings, public or private roads, alleys, tramways, railways, reservoirs, irrigation ditches, wharves, sewers, tunnels, conduits, and subways.

## FORMS AND PRECEDENTS.

### FORM 58. — CORDAGE.

To manufacture, buy, sell, import, export, and generally deal in cordage, binding twine, rope, hemp, hawsers, chains, and other commodities of a similar nature.

To buy, sell, export, import, and generally deal in rope, hemp, and all raw materials suitable for use in the manufacture of cordage and binder twine.

### FORM 59. — COTTON.

To buy, sell, import, export, plant, raise, gather, gin, and clean cotton; to bale cotton by hand or mechanical process; to build, operate, and maintain warehouses, and to do a general warehouse business. To manufacture, buy, sell, export, import, and generally deal in machinery for the ginning, cleaning, baling, and compressing of cotton and other fibrous materials. To engage in the business of producing, buying, selling, importing, and exporting cotton seed. Also to manufacture, purchase, lease, or otherwise acquire, operate, and sell machinery for compressing cotton or other fibrous materials, and for the purpose of ginning and cleaning the same.

### FORM 60. — COTTON BROKERS.

To carry on the business of buying, selling, and otherwise dealing in cotton, either as principals or on commission.

### FORM 61. — COTTON OIL.

To buy, gin, bale, and prepare seed cotton. To carry on the business of buying, selling, importing, exporting, manufacturing, refining, preparing, producing, and generally dealing in cotton oil and other oils; to carry on the business of buying, selling, importing, ginning, baling, warehousing, and shipping seed cotton and any and all other kinds of cotton; to manufacture, produce, prepare, buy, sell, import, export, and generally deal in cotton seed and any and all products and by-products thereof.

### FORM 62. — COTTON PLANTATIONS, ETC.

To manufacture from the cotton plant or other substances pulp, paper, chemicals, and other material, and all or any articles consisting or partly consisting of pulp, paper, chemicals, or other materials, and all or any products thereof. To acquire, own, lease, occupy, use, improve, cultivate, or develop any cotton plantations, wood lands, lands containing coal, iron, or other ores, or other lands for any purpose of the company. To gather, remove, mine, or otherwise extract cotton plants, timber, or other vegetation, coal, ores, or other minerals from any lands owned, acquired, leased, or occupied by the company or from any other lands. To buy and sell or otherwise to deal or to traffic in raw cotton, cotton plant, pulp, paper or chemicals, wood, lumber, coal, iron, ores and other materials, and any of the products thereof and any articles consisting or partly consisting thereof. To purchase, hire, make, construct, or otherwise acquire, provide, maintain, equip, alter, erect, improve, repair, manage, and work any private roads, private telegraph and telephone lines, bridges, piers, wharves, wells, reservoirs, flumes, watercourses, water works, aqueducts, shafts, tunnels, furnaces, coke ovens, crushing works, gas works, electric light and power plants, compressed-air plants, chemical works of all kinds, concentrators, smelters, smelting plants and refineries, matting plants, warehouses, workshops, factories, dwelling houses, stores, hotels, or other buildings, engines, machinery, implements and other works, conveniences and properties of any description in connection with or which may seem directly or indirectly conducive to any of the objects of the company, and to contribute to, subsidize, or otherwise aid or take part in any such operations. To charter, hire, build, or otherwise acquire and maintain steamships and other vessels of any description, and private steam, compressed air, gravity, or electric railroads and tramways, and to employ the same in the transportation of the company's raw material, products, and supplies. To buy, sell, manufacture, and deal in machinery, implements, conveniences, pro-



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visions, and things capable of being used in connection with manufacturing operations or any of the business of the company or required by workmen and others employed by the company. To buy, sell, hold, manage, lease, turn to account, and otherwise acquire land and freehold estates and interests therein; and to lay off realty into lots and blocks, street alleys and parks, and to dedicate such portion thereof to the public as the company may think proper.

### FORM 63. — CUTLERY.

To manufacture, buy, sell, lease, export, import, and generally deal in cutlery, razors, tools, and machinery of all kind, classes, and descriptions.

### FORM 64. — DAIRY PRODUCTS.

To manufacture, buy, sell, import, export, and generally deal in butter, butter-milk, oleomargarine, and butterine; to buy, sell, and generally deal in milk and all kinds of dairy products; to construct, maintain, and operate refrigerating cars, fast freight lines, and warehouses.

### FORM 65. — DECORATING.

To carry on the business of painting, paper hanging, and the decoration of houses and buildings of every class and description; to carry on the business of manufacturing, buying, selling, importing, exporting, and generally dealing in stained and enamelled glass and all kinds of goods, wares, and merchandise suitable for use or ornamentation in the decorating business. To manufacture, prepare, buy, sell, import, and export paint and painters' supplies and kindred articles.

### FORM 66. — DEPARTMENT STORES.

To carry on the business of a general department store; to establish and conduct therein the business of dry-goods merchants, milliners, cloth and fabric manufacturers, furriers, gents' furnishing goods, hosiers, hatters, clothiers, boot and shoe merchants, chemists, druggists, dealers in leather goods, wholesale furniture, silver, china, and glass ware, books, stationery, notions, photographs, pictures, and jewels. To buy, sell, import, export, and generally deal in plated goods, perfumery, toilet articles, bicycles, motor carriages of all kinds, wines, liquors, tobacco, and photographic supplies.

### FORM 67. — DISTILLERS.

To engage in business as distillers and rectifiers of brandies, whiskies, and liquors of all kinds, classes, and descriptions. To carry on the business of manufacturers, distillers, and dealers in wines, brandies, spirits, and liquors of all kinds; to carry on the general business of distilling and rectifying wines, brandies, spirits, and liquors of all kinds, and generally to deal in grains, sugar, molasses, and all products used in connection with the operation of a distillery. To manufacture, buy, sell, import, export, and deal in machinery for the distillation and rectification of liquors of every class and descriptions. To build, operate, and maintain warehouses, bonded or otherwise, and to do a general warehouse business. To issue, register, guaranty, and certify warehouse receipts. To manufacture, buy, sell, and deal in ice.

### FORM 68. — DOCK COMPANY.

To construct, erect, and maintain docks, elevators, piers, basins, loading and unloading machines, coal-yards and all kinds of terminal and transfer facilities for railway or water transportation. Also, to engage in freighting, lighterage, wharfage, and warehousing business. Also, to load and unload cars and vessels of all kinds and descriptions. Also, to purchase docking and berthing facilities for steam and sailing vessels of all kinds and descriptions.

## **FORMS AND PRECEDENTS.**

### **FORM 69. — DREDGING.**

To carry on the business of dredging in all its various branches; to buy, sell, manufacture, purchase, lease, or otherwise acquire, own, maintain, and operate docks, scows, lighters, derricks, vessels — steam or otherwise — engines, cars, wagons, tools, and personal property of every class and description convenient or necessary in carrying on the business of dredging.

### **FORM 70. — DRILLING.**

To prospect, bore, drill for, and produce oil and natural gas; to purchase, lease, or otherwise acquire lands believed to contain oil and gas, and to erect and maintain thereon pumping and drilling stations, reservoirs, tanks, pipe lines and other facilities and conveniences that may be necessary or required in and about said business.

### **FORM 71. — DRUGS.**

To manufacture, buy, sell, import, export, and generally deal in all kinds of drugs, druggists' sundries, pharmaceutical, medicinal, chemical, and all other preparations; to manufacture, buy, sell, import, export, and generally deal in compounds, pigments, electrical, medicinal, surgical, and scientific apparatus and proprietary articles of all kinds. To maintain a laboratory for the analysis of all kinds of chemical, animal, and vegetable products.

### **FORM 72. — DRY GOODS.**

To buy, sell, import, export, manufacture, and deal in dry goods of every class, nature, and description; to conduct a general retail and wholesale dry-goods business, either as principals or on commission or both. To buy, sell, import, export, and deal in laces, linens, white goods, silks, ribbons, neck wear, gloves, cotton, and dry goods of all classes and descriptions.

### **FORM 73. — ELECTRICAL BUSINESS — GENERAL.**

To carry on the business of electricians, electrical engineers and dealers in electricity, and electric motive power, lighting, and heating. To manufacture, buy, sell, import, export, and generally deal in electrical machinery of all classes and descriptions; also to produce, accumulate, distribute for hire electricity and electromotive force, and to supply the same for use as power for lighting, heating, and motive purposes; to carry on the business of lighting cities, towns, villages, streets, buildings — public or private — by means of electricity, and to supply light and heating power to carriers of passengers and goods, either by land or water. To construct, build, purchase, lease, or otherwise acquire, maintain, equip, operate, and build street railways, street cars, and other passenger or freight vehicles operated by electricity or otherwise. To manufacture, use, purchase, lease, or otherwise acquire and maintain telephones, telegraphs, phonographs, and all kinds of electrical devices; to construct, operate, and maintain, purchase, lease, or otherwise acquire subways, conduits, electric lighting and heating plants. To lay, construct, and maintain cables, wires, lines, and all necessary appurtenances and appliances.

### **FORM 74. — ELECTRIC GENERATING MACHINERY.**

To manufacture, construct, purchase, or otherwise acquire, deal in, sell, hire, lease, use, repair, operate, and maintain electric generating machinery and apparatus, dynamos, motors, meters, electric engines, accumulators, and any and all parts, devices, instruments, and things adapted to be used in the construction of or upon or in connection with or in the operation of such electric generating machinery and apparatus, dynamos, motors, meters, electric engines, and accumulators, and also all apparatus, machinery, engines, tools, devices, and appliances for generating or producing, accumulating, distributing, and using electricity for any purpose, and also all parts, attachments, devices, instruments, articles, and things to be used therewith or in the construction and operation thereof. To construct, purchase, or otherwise acquire, deal in, sell, hire, lease, use, repair, operate, and maintain electric light plants, elec-

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tric power plants, electric plants and power plants of any and every character and for any and every purpose, and machinery, engines, tools, devices, and appliances of any and every character whatsoever therefor.

### FORM 75. — ELECTRIC LIGHTING.

To manufacture, generate, store, transmit, and distribute electric current for light, heat, and power; to manufacture, buy, sell, import, export, lease, or otherwise acquire and generally deal in machinery, and devices for the manufacture, generation, storage, transmission, and distribution of electric current for light, heat, and power purposes; to erect, buy, sell, lease, or otherwise acquire, operate, and maintain electric lighting, heating, and power plants; to manufacture, buy, sell, lease, or otherwise acquire, import, export, and generally deal in electric apparatus of all kinds; to erect, buy, sell, lease, or otherwise acquire, maintain, and operate underground subways, conduits, poles, string wires, above, upon, or under the streets, alleys, and territories of counties, townships, cities, towns, and villages, whether maintained or owned by public or private corporations or individuals.

### FORM 76. — ELECTRICAL MACHINERY.

To manufacture, buy, sell, import, export, and generally deal in electrical machinery and supplies of all classes and descriptions; to manufacture, buy, sell, import, export, repair, convert, lease, or otherwise dispose of and generally deal in electric motors, electrostatic machines, continuous electric batteries, interrupted current batteries, dry-cell electrodes, X-Ray tubes, fluoroscopes, internal body batteries, battery apparatus, milli-ampere meters, sinusoidal current electric machines, rheostats, compressors, generators, pumps, motors, and electrical appliances and goods of every kind and character. To buy, sell, import, export, lease, or otherwise acquire and generally deal in all kinds of vehicles, machines, or appliances for the generation of electric power for the purpose of propelling cars, wagons, trucks, and vehicles of every kind and description.

### FORM 77. — ELECTRICAL VEHICLES.

To manufacture, buy, sell, lease, or otherwise acquire, export, import, and generally deal in vehicles of every class and description propelled by electric power; to acquire by purchase, lease, or otherwise electrical vehicles for the purpose of operating the same in carrying and transporting passengers, goods, wares, and merchandise. To acquire by purchase, lease, or otherwise to equip vehicles of every kind and description for the purpose of using and operating the same for the carriage of passengers, goods, wares, and merchandise by means of electricity, gasoline, compressed air, or steam.

### FORM 78. — ELEVATORS (GRAIN).

To erect, buy, sell, lease, or otherwise acquire and maintain and operate elevators for the storage of grains and cereals of every kind and description. To build, operate, and maintain warehouses and to do a general warehouse business; to issue, register, and certify warehouse receipts. To manufacture, buy, sell, and deal in ice.

### FORM 79. — ELEVATOR MACHINERY.

To manufacture, construct, purchase, or otherwise acquire, deal in, sell, hire, lease, use, repair, operate, and maintain elevators and hoisting and lifting apparatus of any and every character and any and all parts, devices, instruments, and things adapted for use in the construction of or upon or in connection with or in the operation of such elevators, hoisting and lifting apparatus of any and every character.

### FORM 80. — ELEVATORS (PASSENGER).

To manufacture, buy, sell, lease, or otherwise acquire, import, export, equip, maintain, and operate elevators and hoisting machinery of every class and description, whether propelled by electricity, air, power, steam, or otherwise.

## FORMS AND PRECEDENTS.

### FORM 81. — ENAMEL AND STAMPED WARE.

To manufacture, cast, forge, roll, tin, enamel, coat, plate, buy, sell, import, export, and generally deal in all kinds of enamel and stamped ware, including kitchen and household wares, household ornaments, and enamel and stamped articles made from iron, steel, tin, aluminum, and other materials.

### FORM 82. — ENGINEERING AND DREDGING COMPANY.

To carry on a general dredging, contracting, and engineering business in all of their branches; also to design, construct, enlarge, extend, repair, complete, take down and remove, or otherwise engage in any work upon bridges, piers, docks, foundations, mines, shafts, tunnels, wells, waterworks, lighthouses, buildings, railroads, telegraph and telephone lines, canals and all kinds of excavations, and iron, wood, masonry, and earth constructions in all parts of the world, and to make, execute, and take or receive any contracts or assignments of contracts, therefor or relating thereto or connected therewith.

To engage in the business of manufacturing, buying, selling, and dealing in cranes for lifting, hoisting, dredging, and conveying materials of all kinds, and in conveying machinery, hoisting machinery, and coal-handling machinery of every description, and in hydraulic, electric, pneumatic, and power machinery of every description, and in steam hammers, charging machines, drilling, concentrating, milling, and mining machines, ingot extractors and foundry plants, and in all kinds of fittings, tools, supplies, and apparatus pertaining thereto; or for any other purpose which now is or may be incidental or necessary for a general contracting or engineering business.

To manufacture or purchase, or both, all tools, machinery, and appliances necessary, proper, or convenient for the carrying on of the said manufactures.

To manufacture, buy, sell, and generally deal in iron, steel, and other metals, and any and all the products thereof.

To quarry, mine, cut, saw, finish, prepare for market, buy, sell, and deal in minerals and mineral substances of all kinds; to buy, lease, or otherwise acquire, use, build, sell, lease, or otherwise dispose of lands or any interest thereon; to build, maintain, own, lease, and operate roads, railroads, or bridges (together with rights of way for the same), canal boats, steamboats, and other means and mechanism of transportation; reservoirs, dams, watercourses, aqueducts, wharves, mills, hydraulic works, power and lighting plants, equipment works, factories, warehouses, dwelling houses, and other works which may be necessary or convenient to the carrying out of the objects of the company.

To purchase and otherwise acquire, and to operate, maintain, and dispose of the mills, plants, and business of individuals, corporations, and firms in any business similar to the business of this company or allied therewith.

To purchase or otherwise acquire, sell, dispose of, and deal in real and personal property of all kinds, and in particular lands, buildings, business concerns and undertakings, mortgages, shares, book debts and claims, and any interest in real or personal property, and any claims against such property or against any person or company, and to carry on any business, concern, or undertaking so acquired.

To enter into, make, perform, and carry out contracts of every kind and for any lawful purpose with any person, firm, association, or corporation.

### FORM 83. — EXPLOSIVES.

To manufacture, buy, sell, export, import, and generally deal in blasts, sporting powder, and high explosives of every class, nature, and description. To manufacture, buy, sell, export, import, and generally deal in machinery, supplies, tools, and appliances necessary, proper, or convenient for the carrying on of the above described lines of business.

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### FORM 84. — EXPRESS.

To carry on the business of engaging, receiving, transporting, and delivering merchandise upon freight, or for hire, within the corporate limits of any city, town, or village in the United States, or between any cities, towns, or villages in the United States, or between any port of the United States and any port or ports of the United States, or between any foreign port or ports and any port or ports of the United States. To carry on the business of equipping, maintaining, and operating wagons, drays, cars, and vessels of every class and description for the carrying on of the business hereinbefore provided for. To enter into contracts for the transportation of merchandise between any of the localities hereinbefore mentioned, and to enter into contracts for the carriage of mails, passengers, goods, wares, and merchandise by any means, either by its own vessels, railways, or conveyances or by the vessels, railways, or conveyances of others. To carry on a general express, freight, and transportation business; to gather, receive, distribute, and deliver goods, wares, and merchandise of every class and description. To establish stores and warehouses for receiving and delivering packages and circular matter.

### FORM 85. — EXTRACTING COMPANY.

To mine and extract gold, silver, and other precious metals from placers and lodes or other mineral lands in any part of the United States, and in any and all foreign countries, and to this end to purchase, lease, or otherwise acquire, hold, own, mortgage, sell, operate, and control mining property, and all necessary plants and machinery adapted for the purposes of mining and extracting gold, silver, and precious metals.

### FORM 86. — FANCY GLASS.

To manufacture, buy, sell, export, import, and generally deal in stained glass, transparent vault and sidewalk lights, hail-proof glass for greenhouses, skylights, and ornamental stained glass of all kinds and descriptions.

### FORM 87. — FARM AND DAIRY PRODUCTS.

To produce, purchase, sell, import, export, and generally deal in milk, butter, cheese, vegetables, and all kinds of farm, garden, and dairy products. Also to sterilize, condense, preserve, and certify milk.

### FORM 88. — FARM PRODUCTS, SOUTHERN.

To produce, manufacture, refine, buy, sell, import, export, and generally deal in cotton, sugar cane, sugar, molasses, syrups, and tobacco in all forms, and other products of agriculture or industry.

### FORM 89. — FIREPROOFING.

To manufacture, buy, sell, import, export, and generally deal in fireproofing brick and building material of every kind, nature, and description. Also to manufacture, buy, sell, import, export, and generally deal in building material and appliances for the construction of fireproof buildings and the protection of the same from fire.

### FORM 90. — FISHERIES.

To engage in the business of producing, selling, exporting, importing, and dealing in fish and sea products, nets, lines, and seines, and all kinds of appliances for the catching or preserving of fish. Also to engage in the business of catching, storing, freezing, packing, salting, canning, and otherwise preserving fish. Also to engage in the business of propagating fish and maintaining ponds for that purpose; to construct, purchase, lease, or otherwise acquire, maintain, and operate cold-storage and refrigerator plants and refrigerating cars, and to do a general warehouse and storage business, and in connection therewith to issue registered, certified, and guaranteed warehouse receipts.

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### FORM 91. — FLOUR.

To manufacture, buy, sell, export, import, and generally deal in flour, feed, breakfast foods, and other articles manufactured from grain or cereals. Also to operate in connection therewith grain warehouses, elevators, and cars for the carrying of grain, flour, and food products.

### FORM 92. — FOOD PRODUCTS.

To produce, manufacture, buy, sell, import, export, and generally deal in food and cereal products of all classes and description. Also to can, export, import, and sell meats, fish, vegetables, and fruits of all kinds and descriptions.

### FORM 93. — FOREIGN COMMERCIAL COMPANY.

This corporation is formed for the carrying on, in any foreign countries, of the several lines of business herein described. To purchase, sell, exchange, lease, or otherwise acquire real or personal property, and in particular lands, oil wells, refineries, mines, mining rights, minerals, ores, buildings, machinery, plants, stores, licenses, concessions, rights of way, light or water rights, and any rights or privileges which may seem to the directors convenient with reference to the business of the company, and, whether for the purpose of resale, realization, or otherwise, to manage, develop, lease, mortgage, or otherwise deal with the whole or any part of such property or rights. To prospect, explore, develop, maintain, and carry on all or any lands, wells, mines or mining rights, minerals, ores, works, or other properties from time to time in the possession of the company in any number deemed desirable; to erect all necessary or convenient refineries, mills, works, machinery, laboratories, workshops, dwelling-houses for workmen and others and other buildings, works, and appliances, and to aid or subscribe towards or subsidize any such objects. To clear, plat for town-site purposes, manage, farm, cultivate, plant, and otherwise exploit, work, or improve any land which or any interest in which may belong to the company; and to deal with or otherwise turn to account any farm or other products of any such land. To construct, purchase, lease, or otherwise acquire, maintain, and operate private railways, tramways, wagon roads, private telegraph and telephone lines. To carry on business as merchants, shipowners, builders, or contractors; to acquire by grant, purchase, or otherwise concessions of any property or privileges from any government or from any authority, individual, municipal, or otherwise, and to perform and fulfil the conditions thereof. To carry on in all its branches any kind of manufacturing and trading business. To buy, sell, and deal in generally all kinds of manufactured products. To acquire by purchase or otherwise, under franchise or grant, all or any rights or privileges heretofore granted or hereafter to be granted by any country, state, or city, foreign or domestic.

To generally trade in, store, carry, and transport all kinds of goods, wares, merchandise, provisions, and supplies. To acquire by purchase or otherwise, to own, hold, buy, sell, or convey, lease, mortgage, or encumber real estate or other property, personal and mixed. To erect and construct houses, buildings, warehouses, and works of every description on any land of the company acquired by purchase, lease, or otherwise.

To buy, sell, or otherwise acquire, import, export, and generally deal in all kinds of agricultural machinery; without the State of \_\_\_\_\_, to acquire, construct, maintain, own, and operate water works, and to supply municipalities, corporations, and individuals with water and water power; also to acquire, erect, maintain, and construct any and all necessary dams, buildings, plants, machinery, fixtures, and apparatus of every sort for supplying municipalities, corporations, and individuals with water and water power for all purposes, and to carry on any business incidental thereto, including the purpose of acquiring, constructing, maintaining, and operating water works, pumping stations, and conduits thereto appertaining without the State of \_\_\_\_\_, and in any foreign country, State, or municipality; also to supply the citizens and inhabitants thereof and the corporations located and transacting business

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therein with water and water power for domestic, mechanical, public, and fire or irrigation purposes, with power to acquire, hold, lease, and convey real and personal estate for the business of the corporation, and to acquire, hold, own, possess, and convey franchises and grants from foreign governmental, State, or municipal authorities for supplying cities, villages, and towns or either, and the inhabitants thereof with water for all purposes; also to carry on the business of operating water works, and to acquire and own stock and bonds of other corporations organized for like purposes, and to acquire, own, hold, and possess all such other personal property as may be suitable or convenient for the business of the company, with the right to issue bonds and secure the same by mortgage of the franchises, rights, contracts, and property of the corporation, real and personal, and to issue common or preferred stock, and to do all and everything necessary, suitable, or proper for the accomplishment of any of the purposes or the attainment of any of the objects hereinbefore enumerated which shall at any time appear for the benefit of the corporation; and in general to carry on any other business, whether manufacturing or otherwise, which may seem to the corporation capable of being conveniently carried on in connection with the above or calculated to enhance the value or render profitable any of the corporation's property or rights.

Without the State of \_\_\_\_\_ and in any foreign country, State, or municipality to acquire water by grant, purchase, development, or otherwise, and in connection therewith to furnish and sell water to corporations, public and private manufactories, and individuals for fire protection, manufacturing, domestic and irrigation purposes, and to collect payments or rentals for the same.

To exercise without the State of \_\_\_\_\_ and within any foreign country, State, or municipality, the right of eminent domain, and in the lawful exercise thereof to condemn for use by said company, its successors or assigns, lands, tenements, hereditaments, and watercourses for the purpose of constructing thereon artificial water ways, irrigation and canal ditches, aqueducts, dams, reservoirs, tanks, stand-pipes, pumping stations, pumping houses, water works, hydrants, mains, pipe lines, gates, and valves.

In connection with the power to exercise the right of eminent domain as hereinbefore provided, said lands, tenements, hereditaments, and watercourses shall, subject to the consent and approval of the State, country, or municipality wherein the said right of eminent domain shall be exercised, be condemned and its value assessed by a board of commissioners appointed by said foreign country, State, or municipality acting jointly with a like commission appointed by the board of directors of this company. In case the two commissions cannot for any reason agree, an arbitrator shall be appointed by the mutual consent of such foreign State, country, or municipality and by the company, whose decision shall be final and conclusive upon both parties to the arbitration.

Without the State of \_\_\_\_\_, subject to the approval and consent of the government, State, or municipality wherein the rights hereinbefore provided shall be exercised, the company shall have the right to make such rules and regulations governing the distribution of water and fixing the prices for water distribution as shall be deemed by it from time to time necessary and proper in the premises; such rules when filed with the proper authorities of the State, county, or municipality to become law.

Without the State of \_\_\_\_\_ and subject to the approval and consent of the government, State, or municipality wherein the rights hereinbefore provided for shall be exercised, the company shall have the right to make such rules and regulations for the collection of debts due the company from corporations, public or private, and from individuals when the same shall have been incurred for water furnished by said company to any such corporation or individuals for the use and benefit of real estate owned or leased by them: such rules to provide by and with the consent of the State, government, or municipality that the same shall be and become a first lien against such real estate just above referred to.

Without the State of \_\_\_\_\_ said Company shall have the power and in any foreign country, State, or municipality wherein it installs water works to accept

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such guaranties from foreign municipalities as to the water of such consumption municipalities as the company shall require in the premises.

The company shall have the right to accept subsidies from foreign governments, States, or municipalities, and shall have the right to organize sub-companies for any purpose or purposes authorized by law. The said company shall have the right without the State of \_\_\_\_\_ and without the United States and in any foreign country, by and with the consent of the government of said country, to import all materials used in the construction of plants erected by it, and to import the same free from all governmental dues and tariffs of said foreign country, provided said materials cannot be purchased therein at prices offered in other countries.

The company shall have the right to sell, assign, and transfer to any corporation or individual any or all of its property upon the consent of two-thirds of its stockholders first obtained at a meeting duly called for that purpose, said sale, assignment, and transfer to include, if the company so elect, any right, grant, franchise, and privilege at any time bestowed upon said company by any government, State, or municipality, foreign or domestic.

### FORM 94. — FREIGHT AGENTS.

To engage in the business of acting as freight agents for the purpose of shipping, transporting, and forwarding goods, wares, and merchandise by land or by water.

### FORM 95. — FRUIT COMPANY.

To buy, sell, import, export, and generally deal in fruits and fruit products. To buy, sell, lease, or otherwise acquire, mortgage, sell, or otherwise dispose of real estate to any amount not limited by law. To engage in the cultivation, planting, and production of fruits and agricultural products. To prepare and manufacture fruit and vegetable products and kindred goods of every class and description.

### FORM 96. — FRUIT PLANTATION.

To plant, cultivate, grow, buy, sell, import, export, and generally deal in oranges, lemons, limes, pineapples, dates, figs, and all other kinds of tropical fruits. Also to plant, cultivate, grow, sell, export, and import all kinds of vegetables and berries. Also to operate and maintain packing houses and canning factories for the packing and canning of fruits, vegetables, and berries of all kinds.

### FORM 97. — FUEL-SAVING MACHINES.

To manufacture, buy, sell, lease, or otherwise acquire and generally deal in smoke-preventing and fuel-saving mechanical and electrical apparatus and devices.

### FORM 98. — FURNITURE.

To manufacture, prepare, produce, sell, import, export, lease, and generally deal in furniture for domestic and business uses. Also to buy, sell, import, export, and generally deal in furnishings of every class and description.

### FORM 99. — GARBAGE MACHINERY.

To manufacture, buy, sell, import, export, and generally deal in street cleaning, garbage, snow removal wagons and carts and all kinds of machinery, apparatus, and appliances connected with the cleaning of streets, walks, areas, platforms, the sprinkling of streets, and the removal of garbage.

### FORM 100. — GAS.

To manufacture, store, sell, distribute, and supply gas, and to operate a gas plant at \_\_\_\_\_. Also to construct works for holding, receiving, and distributing gas. Also to manufacture, buy, sell, export, import, and generally deal in gas



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meters, pipes, stoves, burners, engines, and other appliances and conveniences necessary for the business of the company.

### FORM 101. — GAS ENGINES, BURNERS, ETC.

To manufacture, buy, sell, import, export, and generally deal in gas generators and burners, hydro-carbon burners, incandescent and gasolene lamps, gas and gasolene engines, and any and all machines, articles, and devices for producing and utilizing heat and power.

### FORM 102. — GINNTRIES.

To erect, maintain, purchase, or otherwise acquire, operate, and maintain cotton seed oil mills and ginneries. Also, in connection therewith to produce cotton-seed oil. To buy and sell cotton seed; to manufacture, buy, sell, export, import, and generally deal in cotton seed oil, and the products and by-products of cotton seed. Also to manipulate and compound cotton-seed oil with other substances, so as to make fertilizers to be sold for fertilizing land. Also to gin and compress cotton into bales for marketing purposes or otherwise.

### FORM 103. — GLASS.

To manufacture, export, import, and generally deal in window, plate, and colored glass of all kinds and descriptions. Also to manufacture, buy, sell, export, import, and generally deal in table glass ware, vases, and glass ware of all kinds and descriptions. Also to manufacture, buy, and import such crude materials as are necessary or convenient for the manufacture of glass or glass ware.

### FORM 104. — GOLD AND SILVER WARE.

To manufacture, buy, sell, export, import, and generally deal in gold and silver ware, both solid and plated, of all classes and descriptions. Also to manufacture, buy, sell, export, import, and generally deal in novelties, glass ware, and fine cutlery, leather goods, and carved goods of all classes and descriptions.

### FORM 105. — GRAPHITE.

To manufacture, purify, prepare, export, import, buy, sell, and generally deal in graphite and carbon of all classes and descriptions. Also to engage in the business of manufacturing, buying, selling, exporting, and generally dealing in paints, electrotyping, and kindred lines of business.

### FORM 106. — HARDWARE.

To engage in business as jobbers and retailers of hardware of all kinds and descriptions. Also to buy, sell, export, import, and generally deal in railway, steam-boat, manufacturers', mill, plumbers', miners', blacksmiths', steam fitters', and gas fitters' supplies. Also to buy, sell, export, import, and generally deal in sheet iron, tools, cutlery, saddlery, and saddlers' goods, round and bar iron, bar and tool steel, guns, and sporting goods of all kinds and descriptions.

### FORM 107. — HOTEL COMPANY.

To build, erect, construct, lease, or otherwise acquire, manage, occupy, maintain, and operate buildings for hotel purposes, dwelling houses, apartment houses, office buildings, and other structures. To buy, own, operate, lease, and occupy lands, buildings for hotels, apartment houses, dwelling houses, office buildings, and business structures of all kinds for the accommodation of the public and of individuals. To keep, manage, conduct, and operate hotels, apartment houses, dwelling houses, restaurants, lunch and tea rooms, barber shops, billiard halls, cafés, and bars, for the accommodation of the public and of individuals.

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### FORM 108. — ICE.

To manufacture, sell, buy, export, import, and generally deal in machinery, tools, and devices of every character and description for the cutting or manufacture of ice. To purchase chemicals for the manufacture of artificial ice. To erect, build, purchase, lease, or otherwise acquire suitable land and plants for the manufacture and storage of ice. To engage in the business of wholesaling and retailing ice to middlemen and consumers.

### FORM 109. — INSPECTION OF ELEVATORS.

To engage in the business of inspecting and repairing freight and passenger elevators in office buildings, business blocks, stores, warehouses, hotels, and apartment houses, for the protection of the owners or lessees or for insurance companies engaged in the business of guaranteeing owners or their lessees against accidents in the operation of such freight and passenger elevators.

### FORM 110. — INSURANCE.

To carry on the general business of insurers of persons and property, including thereunder the transaction of a general life, fire, marine, casualty, plate glass, burglary, and guaranty insurance business.

### FORM 111. — INVESTMENT.

To issue shares of stock, debenture stock, bonds, and other obligations, to invest money in, and to hold, sell, and deliver any stock, shares, bonds, debentures, debenture stock, and securities of any government, State, corporation, — public or private, — or other body corporate or otherwise. To vary the investments of the company, to make advances upon money held in trust; to issue on commission, sell, or dispose of any and all the classes of investments hereinbefore enumerated, or to act as agents or brokers in connection therewith.

### FORM 112. — IRON AND STEEL.

To purchase, lease, or otherwise acquire lands in any part of the world for the purpose of prospecting for iron, coal, and other ores. To mine or otherwise to remove from such lands iron, coal, and such other minerals as may be found thereon. To manufacture, buy, sell, export, import, and generally deal in iron, steel, manganese, coke, and coal. To sell and generally deal at wholesale and retail, in iron, steel, manganese, coal, coke, stone, asphaltum, wood, lumber, and other materials and the products thereof.

### FORM 113. — LAMPS.

To manufacture, buy, sell, import, export, and generally deal in kerosene, electric, and gas lamps, burners, and fixtures, and devices of all kinds and descriptions.

### FORM 114. — LAND AND DEVELOPMENT COMPANY.

To acquire by purchase, lease, own, hold, sell, mortgage, or encumber both improved or unimproved real estate wherever situated; to survey, subdivide, plat, and improve the same for purposes of sale or otherwise; also to construct, erect, and operate thereon houses, buildings, light and power plants, machinery, and appliances; to erect, construct, operate, and maintain telegraph and telephone lines; to furnish water power and electricity for power and lighting purposes; to construct, operate, and maintain roadways, tramways, and railways.

### FORM 115. — LAUNDRY.

To build, erect, purchase, lease, equip, or otherwise acquire a suitable plant for the purpose of carrying on a general steam and hand laundry business. Also to

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launder, color, dye, disinfect, mend, clean, renovate, and prepare for use personal wearing apparel, household linen, curtains, clothing, carpets, rugs, and fabrics of all kinds.

### FORM 116. — LEAD COMPANY.

To purchase, lease, or otherwise acquire, to own, develop, and sell lands believed to contain lead and other minerals; also to construct, operate, and carry on works for smelting, parting, refining, or working lead or other metals.

### FORM 117. — LEATHER.

To manufacture, purchase, export, import, sell, and generally deal in leather and all products thereof; also to buy and sell lands, timber, bark, lumber, and leather, both raw and manufactured, and all kinds of leather belting.

### FORM 118. — LIGHT AND HEAT.

To manufacture, distribute, and sell to public and private consumers electric, gas, and oil machines, appliances, and devices suitable for the production of light, heat, and power.

### FORM 119. — LOCOMOBILES.

To manufacture, construct, purchase, or otherwise acquire, deal in, sell, hire, lease, use, repair, operate, and maintain automobiles, locomobiles, autocycles, and motor vehicles, wagons, carriages and stages of every kind and character whatsoever; also all parts, devices, and instruments, appliances, engines, machinery, and things adapted for use in the construction of, upon, or in connection with or in the operation of such automobiles, locomobiles, autocycles, wagons, carriages, stages, and motor vehicles of every kind and character whatsoever; also generating and propelling apparatus, motive power and machinery therefor.

### FORM 120. — LUMBER AND NURSERY.

To purchase, lease, or otherwise acquire real or personal property of every class and description; to raise, produce, buy, sell, exchange, and deal in trees, plants, shrubs, cereals, and any and all kinds of vegetable products. To do a general nursery business. To grow and produce trees and timber suitable for manufacture into lumber. To manufacture lumber, shingles, laths, staves, boxes, and barrels. To buy, lease, or otherwise acquire, maintain, and operate saw-mills and lumber yards.

### FORM 121. — MACHINERY.

To manufacture, export, import, buy, sell, and generally deal in manufacturers', builders', and mill supplies, engines, machinery, and appliances; to manufacture, buy, sell, export, import, and generally deal in machinery of all kinds, classes, and description.

### FORM 122. — MAGAZINES.

To prepare for publication, print, electrotype, bind, sell, and distribute magazines, newspapers, books, and publications of every class and description, and to engage generally in the business of job and book printers, bookbinders, engravers, and electrotypers.

### FORM 123. — MANGANESE, ETC.

To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, exchanging, and otherwise producing and dealing in manganese, copper, lead, zinc, brass, iron, steel, and in all kinds of ores, metals, and minerals, and in the products and by-products thereof of every kind and description; and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, exchange, lease, acquire, and deal in lands, mines, and mineral rights and claims, and in the above specified products, and to conduct all business appurtenant thereto.

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### FORM 124. — MANUFACTURING.

To purchase, lease, or otherwise acquire lands and buildings for the erection and establishment of manufactories and workshops with suitable plants, engines, and machinery. To manufacture, buy, sell, import, export, and generally deal in machinery of all classes and descriptions.

### FORM 125. — MATCHES.

To manufacture, buy, sell, export, import, and generally deal in friction and safety matches of all kinds, classes, and description. Also to manufacture, sell, import, export, and generally deal in boxes and receptacles for packing and shipping matches.

### FORM 126. — MECHANICAL ENGINEERS.

To carry on the business of mechanical engineers in all its various branches; also to manufacture engines, dynamos, implements, rolling-stock, and hardware of all kinds; also to engage in business as tool makers, brass founders, mill workers, boiler makers, millwrights, machinists, manufacturers of iron and steel compressors, merchants, electrical, civil, and water-supply engineers.

### FORM 127. — MEDICAL COLLEGE.

To build, construct, buy, lease, or otherwise acquire, equip, maintain, and conduct a college for the purpose of giving instruction and courses of study in medicine, materia medica, clinics, therapeutics, surgery, and pathology, and in connection with the foregoing to maintain clinics, dispensaries, and hospitals; to issue to those who have pursued such courses of instruction therein as entitle them to the same, and to such as have duly completed such courses the degree of Doctor of Medicine (M.D.). Also the granting of diplomas to those who have not completed the courses necessary to obtain the degree of "Doctor of Medicine," showing the completion of such work as they may have successfully completed while in the institution.

### FORM 128. — MEDICAL INSTITUTE.

To build, equip, maintain, and operate institutions for the treatment and care of the sick, young, and infirm. To furnish massage and electrical treatment of all kinds; to furnish baths of all kinds and descriptions; to operate dispensaries, chemical and physical laboratories; to furnish instruction in osteopathy, massage, medical electricity, chiroprody, dermatology, and manicuring.

### FORM 129. — MERCANTILE AGENCY.

To establish, maintain, and conduct a general mercantile agency in all parts of the world, and in connection therewith to secure, tabulate and distribute information, statistics, and facts relating or affecting the business, liabilities, credit, and character of individuals, firms and corporations engaged in any business in any part of the world. Also to establish, maintain, and conduct in connection therewith a collection business for the collection by presentation, suit, or otherwise of accounts, discounts, and obligations of all kinds. Also to carry on a general printing, publishing, bookbinding, and advertising business, and to prepare, sell, and distribute books, directories, reports, ratings, and other matters of interest to traders, bankers, and business men generally.

### FORM 130. — MICA.

To purchase, lease, or otherwise acquire lands suitable for mining purposes, and to equip, work, excavate, develop, and mine the same; to mine, quarry, smelt, refine, dress, amalgamate, and prepare for market mica, nickel, and talc ores. To manufacture, buy, sell, import, export, and generally deal in plants, machinery, implements, and conveniences required in connection with the mining, quarrying, smelting, refining, dressing and amalgamating of mica, nickel, and talc ores.

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### FORM 131. — MINING. (Limited powers.)

To prospect for, locate, acquire by discovery, lease, license, option, purchase, franchise, grant, gift, devise or otherwise, hold, possess, enjoy, develop, mine, work, operate, and exploit mines, mineral lands and claims, mining rights, metalliferous lands and rights in or elsewhere. Also to carry on the business in all its various branches of mining for gold, silver, tin, lead, iron, and coal.

### FORM 132. — MINING. (Full powers.)

(To the objects set forth in form 131 add the following :)

To construct, purchase, or otherwise acquire, maintain, and operate tunnels, sluices, reservoirs, and ditches for mining, irrigation, and transportation purposes. Also to purchase, lease, or otherwise acquire lands, mills, mill sites, tunnel sites, buildings, machinery, power houses, pumping plants, pump machinery, dump rights, ditch rights, flumes, pipes, pipe lines, private railways, private tramways, private roads, easements, franchises, and licenses. Also to purchase, construct, lease, or otherwise acquire, operate, and maintain electric lighting and power plants, buildings, machinery, appliances, and equipments appertaining thereto. To purchase, construct, lease, or otherwise acquire, operate, and maintain telegraph and telephone lines for the transmission of messages and sound by electricity. To furnish gas, water, electricity, power, heat, and light for mining, milling, agricultural, domestic, and other uses and purposes, and to sell, lease, or dispose of the same to such persons or corporations, and for such price or prices and on such terms and conditions as to this corporation may seem proper. To develop, sell, store, contract for, and generally deal in and dispose of to such persons or corporations, and for such price or prices and on such terms and conditions as to this corporation may seem proper, electrical and other power for the generation, distribution, and supply of electricity for mining, heating, and power purposes. To purchase, lease, or otherwise acquire, construct, and maintain plants for the purpose of extracting values from refractory ores. To purchase, treat, refine, extract, reduce, crush, calcine, smelt, concentrate, and manipulate all kinds of ores, minerals, and metalliferous substances with a view to obtaining therefrom gold, silver, tin, lead, copper, iron, and other metals, combination of metals, or other valuable substances with a view to preparing the same for market. Generally to engage in smelting, reducing, crushing, refining, milling, treating, assaying, and selling minerals and ores of all kinds, classes, and descriptions. To buy, sell, manufacture, and generally deal in machinery, blasting powder, and high explosives of every description, fuses, caps, implements, candles, and conveniences suitable for use in connection with mining and metallurgical operations. To purchase, lease, or otherwise acquire lands for the purpose of erecting thereon office buildings, plants, workshops, dwelling houses, warehouses, stores, hotels, and other buildings in connection with the foregoing purposes.

### FORM 133. — MINING INVESTMENTS.

To invest in, take over, buy, sell, pledge, and exchange stock, shares, bonds, and securities of mining companies, whether incorporated under the laws of the several commonwealths or under the laws of any foreign country; to make advances upon, hold in trust, buy and sell on commission, sell or dispose of any of the investments aforesaid, or to act as auditor for any of the above or like purposes. To hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock, bonds, and securities issued or created by other corporations, and while the holder thereof to exercise all the rights and privileges of ownership, including the right to vote thereon. To cause or allow the legal title, estate, and interest in any property acquired, established, or carried on by the company to remain or to be vested or registered in the name of or carried on by any other company or companies, foreign or domestic, formed or to be formed, and either upon trust for or as agents or nominees of this company, or upon any other terms or conditions which the Board of Directors may consider for the benefit of

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this company, and to manage the affairs or take over and carry on the business of such company or companies so formed or to be formed, either by acquiring the shares, stocks, or other securities thereof, or otherwise howsoever, and to exercise all or any of the powers of holders of shares, stocks, or securities thereof, and to receive and distribute as profits the dividends and interest on such shares, stocks, or securities. To guarantee the payment of dividends or interest on any share, stocks, debentures, or other securities issued by or any other contract or obligation of any corporation when in the judgment of its directors the same is proper or necessary for the business of the company; and provided the required authority be first obtained from the Board of Directors for that purpose. To remunerate any person or persons or corporation for services rendered or to be rendered in placing or assisting to place, or guaranteeing the placing of any of the shares of the company's capital, or any debentures or other securities of the company, or in or about the formation or promotion of the company or the conduct of its business.

### FORM 134.—MINING RIGHTS.

To search for, prospect, and explore for ores and minerals, and to locate mining claims, grounds, or lodes in the United States of America or the territories thereof, or in foreign countries, and record the same pursuant to the mining laws of the said United States or other countries; and to acquire mining and mineral rights or interest therein when desirable; to mine, quarry, work, and develop mining grounds, claims, or lodes, mining and mineral rights; to crush, concentrate, smelt, refine, dress, amalgamate, and prepare for market ores, metals, and mineral substances of all kinds, and to do all other acts and things necessary or conducive to the company's objects, including the erection of buildings or works and the installing of machinery and appliances of every description whenever required; to mortgage any mining grounds, claims, or lodes, mining and mineral rights, or other property belonging to said company, and to issue bonds of the company whenever it may be determined so to do. To purchase, acquire by lease, license, or otherwise mining grounds, claims, or lodes, mining and mineral rights, concessions or grants, or any interest therein, and to obtain patents therefor when desirable. To buy, sell, and deal in ores and minerals, plants, machinery, tools, implements, groceries, provisions, clothing, boots and shoes, furnishing articles, hardware, wooden and metallic ware, with all other articles and things in any wise required or capable of being used in connection with mining operations, and to make and manufacture such articles when required. To construct, carry out, maintain, improve, equip, manage, control, and superintend any roads, ways, private railways, private tramways, bridges, reservoirs, water courses, aqueducts, wharves, piers, docks, bulkheads, furnaces, mills, crushing, concentrating, and smelting works, hydraulic works, factories, dwelling houses, and warehouses; to purchase vessels or other means of transportation, except railroads other than private railroads, and equip and operate the same as required for the uses and purposes of the company, and also to do any other acts and things relating to mining.

### FORM 135.—MORTGAGE AND TRUST.

To issue, secure, or offer for sale stocks, bonds, mortgages, and other obligations; to invest for individuals or corporations any stocks, bonds, mortgages, debentures, and securities of any government, state, corporation, — public or private, — and to vary the investments of the company. To transfer, register, and countersign certificates of stock, bonds, receipts, or other evidences of indebtedness. To act as agent of any corporation, domestic or foreign, public or private. To act as trustee under any deed of trust, mortgage, bond, or other instrument issued by any municipality, body politic or corporate, person, or association, and to accept and execute any business in relation thereto. To act as registrar of stocks, bonds, certificates, and debentures, and as transfer agent of any corporations or individuals. To act as resident agent for domestic or foreign corporations. (See also Form 202.)

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### FORM 136. — MOTOR CARS.

To manufacture, buy, sell, import, export, and generally deal in all kinds of automobiles, motors, engines, machines, and all kinds of machinery and devices for the operation of steam, electricity, and other forms of power. To manufacture, buy, sell, export, import, and generally deal in cars, carriages, wagons, engines, apparatus, and vehicles of every kind and description for the transportation of passengers and goods. To manufacture, buy, sell, import, export, and generally deal in machinery, machine supplies, and engineering appliances incidental to the construction of motor cars.

### FORM 137. — MOTOR COMPANIES.

To manufacture, buy, sell, export, import, and generally deal in motors run and operated by water, steam, or electricity, including the manufacturing, buying, selling, importing, exporting, and generally dealing in any and all kinds of motors and other parts and materials entered into or used in the manufacture and operation of the same, and generally to carry on the manufacturing and selling of any articles or specialties, patented or otherwise, which can be carried on in conjunction with any of the matters aforesaid in or upon the premises of the company, and for that purpose to purchase, lease, or otherwise acquire and sell real and personal property, including all necessary machinery adapted to such apparatus.

### FORM 138. — MUSICAL INSTRUMENTS.

To manufacture, buy, sell, import, export, and generally deal in musical instruments of all kinds, classes, and description. Also to purchase, print, publish, and sell vocal and instrumental sheet music.

### FORM 139. — NEWSPAPERS.

To engage in business as proprietors and publishers of newspapers to be printed at the City of \_\_\_\_\_ State of \_\_\_\_\_ and to be known as "\_\_\_\_\_", and in connection therewith to carry on the business of job printing, engravers, publishers, lithographers and electrotypers.

### FORM 140. — NICKEL.

To prospect for, acquire, lease, and develop lands containing or believed to contain nickel and other ores, coal, or oil. Also to mine, mill, reduce, smelt, manufacture, and prepare for market nickel and other wares and all or any products thereof.

### FORM 141. — NOVELTIES.

To manufacture, buy, sell, import, export, and generally deal in novelties of every class and description, whether patented or otherwise. To engage generally in buying, selling of goods, wares, and merchandise of every class and description.

### FORM 142. — OIL AND PETROLEUM.

To locate, purchase, lease, or otherwise acquire lands, mines, mineral claims, water rights and franchises, mill sites, timber lands, limestone quarries, and particularly lands containing or believed to contain petroleum and other oil springs and deposits; to carry on the business of searching for, prospecting, preparing, producing, refining, piping, storing, transporting, supplying, buying, selling, manufacturing, and distributing petroleum and other oils and their products and by-products. To construct, build, operate, and maintain oil wells, refineries, buildings, machinery, plants, stores, and warehouses. To handle, store, transport, and prepare for market oils and oil products and by-products, and to erect, maintain, and operate refineries, mills, works, laboratories, workshops, and dwelling houses for workmen and others. To search for, prospect, examine, refine, smelt, reduce, crush, concentrate, manipulate, and treat gold, silver, lead, copper, iron, and minerals of every class and description. To manufacture, buy, sell, import, export, and generally deal in machinery,

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pumps, drills, fuses, caps, candles, implements, and conveniences suitable for use in connection with the oil or mining business.

### FORM 143. — OIL AND PIPE LINE COMPANY.

To purchase, lease, or otherwise acquire lands, mineral and oil rights and privileges in the State of . Also to purchase, lease, or otherwise acquire in the State of and other parts of the world, lands containing or believed to contain petroleum or other oil spring deposits. Also to store and transport oil, gas, brine, and other mineral solutions, and to make reasonable charges therefor. To buy, sell, and furnish oil and gas for lighting, heating, and other purposes. To lay down, construct, maintain, and operate pipe lines, tubes, tanks, pump stations, connections, fixtures, storage houses, and such machinery, apparatus, and devices as may be necessary to operate such pipes and pipe lines between various points. Also, wherever permitted by law, to have right and power to enter upon rights of way, easements, properties of all persons and corporations, and to have the right to lay its pipes and pipe lines across and under any public road, railroad, right of way, street railroad, canal, or stream. To lay its pipe and pipe lines across and under any street or alley in any incorporated city or town, with the consent and under the direction of the proper authorities of such cities or towns. Also to carry on the business of producing, refining, and storing petroleum products, vegetable and mineral oils.

### FORM 144. — PAINTS.

To manufacture, buy, sell, import, export, and generally deal in paints and painters' supplies.

### FORM 145. — PAPER.

To engage in business as manufacturers and dealers in paper, and paper substitutes of all kinds. Also to buy, sell, export, import, and generally deal in wall paper, wood pulps, and all kinds of materials useful or necessary in the manufacture of paper.

### FORM 146. — PASSENGER AND BAGGAGE TRANSFER.

To engage in the business of transfer for hire within the city of (or between certain designated cities) passage, baggage, and freight. Also to purchase, lease, or otherwise acquire carriages, coupés, hansoms, automobiles, baggage, express and mail wagons, carts, and drays. Also to purchase horses, barns, and warehouses in order to facilitate the carrying on of the above lines of business. Also to store and care for all kinds of vehicles, trunks, and personal property of every description in connection therewith. To operate and maintain one or more barns, warehouses, and storerooms.

### FORM 147. — PATENT MEDICINES.

To manufacture, buy, sell, export, import, and generally deal in patent medicines, formulæ, and preparations of every kind, class, and description. Also to carry on the business of chemists, druggists, chemical manufacturers and dealers in pharmaceutical and medicinal preparations. Also to prepare, buy, sell, export, import, and generally deal in mineral waters, liquors, and prepared foods.

### FORM 148. — PATENTS.

To establish, conduct, and carry on the business of buying, selling, and otherwise dealing in improvements, trade marks, trade names, and any letters patent, registration, or grants, both domestic and foreign, whether issued by the United States or any foreign country or government. To apply for, procure, and obtain any and all necessary letters patent or grants, both foreign and domestic, for all inventions, improvements, and secret processes for the account and in the name of



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the corporation, or as the agent for any person, firm, or corporation. To exploit and develop any and all such inventions, improvements, trade marks, and processes by establishing in this or any foreign country any and all necessary plants, factories, and machinery for the manufacture of patent articles of any class, nature, or description.

### FORM 149. — PHONOGRAPHS.

To manufacture, buy, sell, export, import, lease, or otherwise acquire, invest, and generally trade in sound-reproducing machines, talking machines, and records for such machines, and all appurtenances thereto, together with all rights, patents, and improvements thereon, now held or hereafter to be obtained by purchase or otherwise, including all necessary machinery adapted for such purposes.

### FORM 150. — PHOTOGRAPHY.

To carry on a general photographic business in all its various branches within the city of . To purchase, lease, or otherwise acquire the necessary chemicals, screens, drugs, cameras, and apparatus for the taking, developing, and finishing of all kinds of photographs. To purchase, sell, and generally deal in cameras, photographic supplies, pictures, picture-frames, prints, drugs, chemicals, and supplies necessary or useful in the taking, development, and printing of photographs.

### FORM 151. — PIANOS.

To manufacture, buy, sell, import, export, and generally deal in pianos, organs, and all kinds of musical instruments. To sell and lease musical instruments and any and all parts thereof. To manufacture, buy, sell, import, export, and generally deal in all kinds of machinery, supplies, implements, appliances, substances, and materials incidental to or entering into the manufacture of pianos, organs, and musical instruments. To purchase or otherwise acquire any interest in and to patents, brevets d'invention, licenses, concessions, and the like conferring an exclusive or non-exclusive or limited right or any secret or other information as to any invention in relation to musical instruments of any kind.

### FORM 152. — PIPE FOUNDRY.

To manufacture, buy, sell, export, import, and generally deal in all kinds of pipe castings and fittings.

### FORM 153. — PLANTATION COMPANY.

To engage in the buying, selling, raising, importing, and exporting of fruit and vegetable products. To cultivate, plant, produce, buy, sell, and raise all kinds of vegetable products. To do a general importing and exporting business by and between domestic and foreign ports, and also a general coastwise business to domestic ports.

### FORM 154. — PLUMBERS' SUPPLIES.

To manufacture, export, import, buy, sell, and generally deal in all kinds of plumber supplies, including lead, steel, and copper, pipe, traps, sheet lead, solder, and iron. Also brass, wood, marble, or other earthenware material or supplies necessary or convenient in carrying on the aforesaid business.

### FORM 155. — POTTERY.

To manufacture, buy, sell, import, export, and generally deal in all kinds of pottery, tile, and earthen products.

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### FORM 156. — POULTRY.

To engage in the business of raising, selling, and preparing for market all poultry and eggs. To purchase, lease, or otherwise acquire land, buildings, and necessary equipment for the carrying on of the aforesaid business. To buy and sell chicken food and incubators. To buy, sell, import, export, and generally deal in poultry and poultry products of every kind, class, and description. To hatch, breed, and raise, either by natural means or incubators, poultry of every kind, class, and description. To buy and sell chickens, ducks, geese, and guinea-fowls. To print, publish, and distribute magazines and literature of every class and description.

### FORM 157. — PUBLISHERS.

To engage in business as proprietors and publishers of newspapers, journals, and magazines. To acquire, print, publish, conduct, or otherwise deal with any newspaper, magazine, books, or other publications; to carry on the business of newspaper and magazine proprietors and publishers. To carry on the business of job printers, lithographers, electrotypers, engravers, and advertising agents.

### FORM 158. — QUARRY.

To acquire, mine, cut, finish, buy, sell, import, export, and generally deal in marble, and all kinds of building and paving stones. Also to acquire by purchase, lease, or otherwise lands believed to contain marble, building and paving stone.

### FORM 159. — RAILWAY EQUIPMENT.

To buy, lease, or otherwise acquire, construct, maintain, and operate smelters, rolling mills, carriages, machine shops, furnaces, crushing works, and hydraulic works of every class and description; to manufacture, buy, sell, import, export, and generally deal in all kinds of rails, ties, switches, signals, torpedoes, fuses, engines, and supplies for railroads and street railways; to manufacture, buy, import, export, and generally deal in iron, steel, aluminum, manganese, lead, zinc, tin, copper, and lumber.

### FORM 160. — REAL ESTATE. (City.)

To purchase, lease, or otherwise acquire, sell, and exchange lands, tenements, and hereditaments situated in the city of \_\_\_\_\_ and vicinity; also to build, construct, reconstruct, alter, furnish, equip, and maintain thereon offices, apartment houses, business blocks, buildings, shops, and structures of all kinds for others on commission or otherwise. Also to manage business blocks, apartment houses for owners, and to guaranty the income thereof, and to collect rents therefrom, and to supply to tenants and others janitor service, light, heat, and power appliances, messenger and elevator service. Also to assist financially or otherwise contractors and builders engaged in the business of building or improving any lands wherever situated.

### FORM 161. — REALTY.

To buy, sell, exchange, and generally deal in real properties, improved and unimproved, office buildings, store buildings, dwelling houses, barns, wharves, water rights and privileges; to build, construct, operate, maintain, lease, and sell dwelling houses, apartment houses, and business blocks of all kinds and description. To maintain a general real estate agency and broker's business, including the right to manage estates, to act as agent, broker, or attorney in fact for any person or corporation; to make and obtain loans upon real estate, improved or unimproved, and to supervise, manage, and protect such property and loans, and all interests and claims affecting the same; to have the same insured against fire and other casualties; to investigate the credit, financial solvency and sufficiency of borrowers, mortgagors, and sureties upon bonds, mortgages, and undertakings. To improve,

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manage, operate, sell, mortgage, lease, or otherwise dispose of any property, real or personal, and take mortgages and assignments of mortgages upon the same.

### FORM 162. — REDUCTION COMPANY.

To buy, lease, or otherwise acquire, construct, maintain, and operate plants of every nature and description, for the purpose of extracting refractory ores and minerals of every description.

### FORM 163. — REFINERIES.

To buy, lease, or otherwise acquire lands containing or believed to contain petroleum, natural gas, oil springs, or mineral deposits; to carry on the business of producing, refining, storing, supplying, and distributing petroleum products of all classes and description; to refine, store, distribute, and sell vegetable and mineral oils; to purchase or otherwise acquire, lease, construct, operate, and maintain refineries, mill works, laboratories, pipe lines, storage tanks, dwelling houses for workmen and others in connection with the purposes hereinbefore set forth.

### FORM 164. — RESTAURANTS.

To purchase, lease, own, and operate restaurants and lunch stands in the city of . Also to buy and sell cigars and liquors.

### FORM 165. — RUBBER COMPANY.

To acquire by purchase, lease, exchange, or otherwise lands, tenements, hereditaments, and property of every class and description, for the planting, cultivation, and growing of rubber trees, and for the purpose of producing, buying, exporting, importing, selling, and generally dealing in rubber, and the articles and goods of all kinds of which rubber is a component part, together with the various materials which enter into the manufacture of such goods. To carry on the business of planters. To purchase, or otherwise acquire, manufacture, prepare for market, export, import, and sell any products or by-products of rubber, and to sell, dispose of, and generally deal in the same, either in their prepared, manufactured, or raw state, both at wholesale and retail.

### FORM 166. — SALT.

To manufacture, buy, sell, export, import, and generally deal in salt and the products thereof. Also to acquire by purchase, lease, or otherwise lands believed to contain salt and other minerals.

### FORM 167. — SANITARiums.

To build, construct, purchase, lease, or otherwise acquire, equip, and maintain sanitariums for the treatment and care of the sick, disabled, and infirm. To maintain in connection therewith dispensaries, hotels, and training schools for nurses.

### FORM 168. — SAUCES AND PICKLES.

To manufacture, buy, sell, import, export, and generally deal in sauces, catsups, relishes, pickles, and garnishing supplies; to buy, lease, or otherwise acquire, construct, maintain, and operate sauce and pickle factories, cold-storage receptacles, warehouses, and depots. To raise vegetables and fruits of all classes and descriptions.

### FORM 169. — SAW-MILLS.

To purchase, lease, or otherwise acquire timber-lands, tracts, and rights. To buy, sell, export, import, boom, saw, and prepare for market, and generally deal in timber and wood of all kinds. Also to manufacture, buy, sell, export, import, and generally deal in all kinds of goods and articles manufactured from wood, and generally to carry on business as saw-mill proprietors, timber and lumber dealers.

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### FORM 170. — SCALING.

To scale steam boilers, bilges, water tanks, and kindred articles; to clean and furnish shafts and tunnels; to build wells and kindred articles, and to do all kinds of repair work; to build, repair, own, buy, and sell scaling works and shops of every nature and description; to manufacture, buy, sell, import, export, and generally deal in engines, boilers, shop machinery, fixtures, and supplies, and all kinds of heavy hardware.

### FORM 171. — SEPARATORS.

To manufacture, buy, sell, import, export, and generally deal in separating machines of all kinds, classes, and description; to buy, lease, or otherwise acquire, construct, operate, and maintain factories, workshops, warehouses, and depots for the manufacture of separating machines.

### FORM 172. — SEWING MACHINES.

To manufacture, buy, sell, import, export, and generally deal in sewing machines of all kinds, and all tools and appliances appertaining thereto.

### FORM 173. — SHEEP.

To carry on in all its branches a general live stock and stock raising farm and range business; to buy, sell, breed, raise, export, import, and generally deal in sheep, cattle, horses, poultry, and all kinds of domestic animals. To buy, lease, or otherwise acquire, construct, maintain, and operate slaughter-houses, factories, stock yards, and to carry on a dairy business in all its several branches.

### FORM 174. — SHIP BUILDING.

To build, prepare, operate, sell, and charter steamships, sailing vessels, boats, and canoes of all kinds, together with all appliances and machinery entering into or convenient for the construction or operation of the same. Also to manufacture, buy, sell, export, import, and generally deal in ropes, cables, windlasses, capstans, tackle, and tarpaulins of all kinds and descriptions.

### FORM 175. — SILK.

To manufacture, produce, export, import, buy, sell, and generally deal in silk and other fabrics; to raise silkworms and cocoons, and deal in each and all of the products thereof; to manufacture, buy, sell, import, export, and generally deal in cocoon yarn, thread, and other like material, and to spin, weave, and handle the same and deal with other fabrics. To plant, raise, buy, and sell cotton plants and convert the same into fabrics. To plant and raise mulberry trees and other silkworm foods.

### FORM 176. — SLATE AND TILE.

To manufacture, buy, sell, export, import, and generally deal in slate, stone, tile, brick, marble, and building materials of all kinds and descriptions.

### FORM 177. — SLAUGHTER-HOUSES.

To raise and purchase cattle, hogs, and sheep for the purpose of fattening the same for food purposes. Also to carry on the business of maintaining and operating slaughter-houses for the purpose of slaughtering cattle, hogs, and sheep. To operate and maintain stock yards, cold-storage plant, and warehouses. To buy and sell hay, oats, bran, corn, alfalfa and other grains, grasses, and cereals. Also to engage in the manufacture and production of hides, oil, glue, and animal fertilizers of all kinds and descriptions.

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### FORM 178. — SLOT MACHINES.

To manufacture, buy, sell, import, export, and generally deal in slot machines of whatsoever name and nature; to manufacture, buy, sell, import, export, and generally deal in all articles, apparatus, plants, and machinery useful in or which may be used in connection with the foregoing described business or any of its branches.

### FORM 179. — SOAP.

To manufacture, buy, sell, import, export, and generally deal in soap for toilet and domestic use. Also to purchase all materials suitable or necessary for the proper manufacture of soap.

### FORM 180. — STATIONARY ENGINES.

To manufacture, construct, purchase, or otherwise acquire, deal in, sell, hire, lease, use, repair, operate, and maintain stationary engines and engines or power applying machinery and devices of any and every character, and any and all parts, devices, appliances, instruments, and things adapted for use in the construction of, upon, or in connection with or in the operation of such stationary engines and engines or power applying machinery and devices of any and every character.

### FORM 181. — STATIONERS.

To engage in business as stationers, printers, electrotypers, lithographers, engravers, bookbinders, booksellers, and paper dealers.

### FORM 182. — STEAMBOATS.

To buy, lease, or otherwise acquire, construct, maintain, and operate steamboats and other vessels of any class; to establish and maintain lines of regular service of steamboats and other vessels to be employed in inland or coastwise service in the United States and between the ports of the United States and foreign countries. To carry on the business of shipowners, and to enter into contracts for the carriage of mails, passengers, goods, and merchandise by any means, either by its own vessels, railways, or conveniences or by or over the vessels, railways, or conveniences of others. To insure against loss by fire, flood, or other calamity the cargo carried or transported upon the company's steamboats or other vessels, and upon such steamboats and vessels themselves. To buy, lease, or otherwise acquire, construct, maintain, and operate wharves, piers, docks, warehouses, and depots; to manufacture, buy, sell, and generally deal in all kinds of materials, articles, machinery, engines, boilers, and furniture entered into or suitable or convenient for the construction, equipment, and operation of steamboats and other vessels; to design, construct, and repair vessels, ships, boats, wharves, docks, dry docks, and piers. To carry on the business of cold-storage warehouse and any business incidental or impliedly incidental thereto. To issue certificates, negotiable or otherwise, to persons warehousing goods with the corporation, and to make advances or loans upon the security of such goods or otherwise.

### FORM 183. — STEEL LATH AND FIREPROOFING COMPANY.

To manufacture, sell, import, export, and generally deal in all kinds of sheet-steel lath suitable for the fireproofing of buildings and structures of every kind and description; to manufacture, sell, import, export, and generally deal in sheet iron and steel of all kinds and description; to carry on the business of contractors and builders in all the various branches of said business.

### FORM 184. — STEEL MANUFACTURE. (Part of charter of U. S. Steel Corporation.)

To mine, prepare for market, and transport coal, iron, steel, and all mineral substances. To manufacture, buy, sell, deal in and deal with iron, steel, copper, man-

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ganese, lumber, and other materials, and all or any articles consisting or partly consisting of iron, steel, copper, wood, or other materials, and all or any products thereof. To acquire, own, lease, occupy, use, and develop any lands containing coal or iron, manganese, stones, or other ores or oil, and any woodlands or other lands for any purpose of the company. To mine or otherwise extract or remove coal, ore, stone, and other minerals and timber from any lands owned, acquired, leased, or occupied by the company, or from any other lands. To buy, sell, or otherwise deal or traffic in iron, steel, manganese, copper, stone, ores, coal, coke, wood, lumber, and other materials and any of the products thereof, and any articles consisting or partly consisting thereof. To promote, construct, divide, acquire, approve, manage, develop, control, take on lease or agreement, sell and use, work and dispose of any roads, sidings, private railways, pipe lines, wharves, docks, bridges, reservoirs, canals, water courses, hydraulic works, gas works, electrical works, mills, foundries, furnaces, warehouses, ships, buildings, buildings for employees and others, and other works and appliances. To construct, lease, own, operate, and sell transportation rights by land or water in any State or country subject to the laws thereof, either directly or through the ownership of stock in any corporation. To manufacture, purchase, lease, acquire, and own goods, wares, and merchandise and personal property of every class and description. To hold, own, sell, and otherwise dispose of, trade, deal in, and deal with the same. To acquire and undertake the good will, property, rights, franchises, and assets of every kind and the liabilities of any person, firm, or association, either wholly or partly, and to pay for the same in cash, stock, or bonds of the company or otherwise. To the extent permitted by the local laws of any State or foreign country where the property may be situated, the company may cause or allow the legal title, estate, and interest in any property, or business acquired or carried on by the company to remain or be vested or registered in the name of or carried on by an individual, or to be operated by another company or companies, foreign or domestic, formed or to be formed, and either upon trust for or as agents of this company or upon any other terms and conditions which the board of directors may consider for the benefit of this company, to manage the affairs so taken over. To carry on the business of such company or companies so formed or to be formed, either by acquiring the stock or other securities thereof, and acquire all or any of the powers of holders of shares, stock, or securities thereof, and receive and distribute dividends on such stock, shares and securities.

### FORM 185. — STEREOPTICON MACHINES.

To manufacture, construct, buy, sell, import, export, and generally deal in stereopticon machines, whether automatic or otherwise, of all kinds and description; and in connection therewith to buy, sell, lease, or otherwise acquire suitable stores, space in expositions and fairs, and concessions of all kinds.

### FORM 186. — STEVEDORES.

To carry on business as stevedores in the city of \_\_\_\_\_ and vicinity, and in connection therewith to buy and sell trucks, wheelbarrows, hoisting machinery, apparatus, donkey-engines, draft animals and all kinds of appliances necessary, useful, or convenient to the proper transaction of the business of stevedores.

### FORM 187. — STOCK BROKERS.

To buy, sell, negotiate, exchange, pledge, trade, and deal in and with shares, stocks, debentures, scrip, bonds, and securities of any government, state, or public or private corporation or any corporate body; to trade and deal in and with real estate, mines, metals, minerals, and oil, cotton, grain, produce, or other commodities; to invest in any or either of the foregoing, and from time to time to change the investments of the company; to mortgage, pledge, or otherwise change all or any part of the investments of the company or its property and rights; to make advances on, sell or dispose of, any property or investments, or to act as agent,

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factor, or broker for any or either of the corporate purposes. To purchase or otherwise acquire the capital stock, shares, debentures, scrip, bonds, or other evidences of indebtedness of any other corporation, and to issue in exchange its own stock, shares, bonds, debentures, scrip, or other evidences of indebtedness in payment therefor, and while the owner thereof to exercise all the rights of ownership, including the power to vote upon such stock or shares. To purchase, receive, hold, and own mortgages, debentures, shares, and other securities or obligations of any public, private, or municipal corporation, or bonds or other securities or obligations of the government of the United States, or of any State, district, territory, colony, or dependency of the United States or any foreign country, State, or colony; to collect and receive, disburse and dispose of, all interest, dividends, accumulations, earnings, and income from, upon, or on account of any bonds, debentures, stocks, shares, securities, contracts, evidences of indebtedness, obligations, or other property held or owned by the corporation therein; to do any and all lawful acts tending to increase or enhance the value of the property of the company. To issue stock, shares, bonds, debentures, certificates, scrip, or other corporate obligations and to secure the payment thereof by mortgage, pledge, or deed of trust of or upon the whole or any portion of the corporate property or funds; to sell, pledge, or otherwise dispose of bonds, debentures, or other corporate obligations for proper and lawful purposes, as and when the Board of Directors shall deem necessary, advisable, or expedient; to promote the corporate business of investment and dealing in securities in all lawful ways; and to receive, collect, transmit, pay out, and disburse funds in the course of its business; and to the extent authorized by law to lease, purchase, or otherwise acquire, hold, use, sell, trade, and deal in and with, assign, pledge, mortgage, transfer, and convey real and personal property of any name or nature; to issue and accept drafts, bills of exchange, promissory notes, scrip, drafts, acceptances, or other corporate obligations and negotiate the same.

### FORM 188. — STORAGE BATTERIES.

To manufacture, buy, sell, export, import, and generally deal in electrical storage batteries, machineries, and appliances for the storage of electricity for the purposes of furnishing power for business or domestic purposes.

### FORM 189. — SUGAR REFINERIES.

To plant, cultivate, grow, produce, manufacture, buy, sell, export, import, and generally deal in sugar. Also to purchase, lease, or otherwise acquire sugar lands and plantations, refineries, buildings, mills, and machinery. To plant, cultivate, produce, and raise sugar cane. Also to carry on the business of refining, preparing, buying, selling, importing, exporting, and generally dealing in sugar cane, sugar mills, and syrups.

### FORM 190. — SURGICAL INSTRUMENTS.

To manufacture, buy, sell, and deal in surgical, chemical, electrical, and scientific instruments and proprietary articles of every class and description.

### FORM 191. — TAILORS.

To carry on the business of tailoring and dealing in cloth and clothes and all kinds of gents' furnishing goods.

### FORM 192. — TANNERIES.

To construct, build, maintain, operate one or more tanneries in the State of . Also to buy, sell, import, export, and generally deal in hides, skins, raw and finished, and leather of all classes and description. Also to purchase, sell, lease, or otherwise acquire lands, timber, and bark required for the operation of the aforesaid line of business.

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### FORM 193. — TAR MANUFACTURING.

To purchase, lease, or otherwise acquire lands for the erection and establishment of a manufactory or manufactories and workshops with suitable plants, engines, and machinery, with a view to manufacturing, purchasing, leasing, or otherwise dealing in coal tar, and each and every by-product of coal tar, utilizing the same in any condition, connection, or form whatsoever; to manufacture, purchase, lease, export, import, and generally deal in coal tar and any by-product thereof, and any materials, articles, and things required for, or in connection with or incidental to the manufacturing thereof.

### FORM 194. — TELEGRAPH AND TELEPHONE COMPANIES.

To acquire, manufacture, buy, sell, and generally deal in telegraph and telephone instruments, machines, and apparatus; to construct, erect, build, operate, and maintain telegraph and telephone stations for the transmission and reception of messages by electricity, wire or wireless instruments; to receive and transmit messages by signal or other device and by any and all other electrical devices and contrivances from, upon, and by wire or wireless instruments and any and all similar, kindred, and like instruments and devices; to transmit and receive messages for hire over, upon, and by wire and wireless systems, of telegraphing and telephoning by any and all systems and devices for transmitting and receiving messages. To buy, build, or cause to be built, operate and maintain stations for the transmission and reception of telegraph and telephone messages by means of wire or wireless systems; to carry on the business of transmitting and receiving messages from such stations. To acquire and hold lands, property, and buildings necessary or useful in the conduct of the business of telegraph and telephone companies under wire and wireless systems, and in connection therewith to manufacture and construct machinery, instruments, apparatus, wires, and any and all other materials and articles used with or pertaining to telegraph and telephone lines.

### FORM 195. — THEATRES.

To construct, purchase, lease, or otherwise acquire theatres, concert halls, and amusement places of all kinds and descriptions. Also to carry on the business of theatrical proprietors, and music hall proprietors. Also to manage theatrical, concert hall, and vaudeville companies of all kinds, classes, and description. Also to engage and employ actors, singers, dancers, athletic, theatrical, and musical artists of all kinds. Also to purchase, own, produce, and present, and to license others to produce and present, theatrical plays, operas, and exhibitions of various kinds.

### FORM 196. — THREAD.

To manufacture, buy, sell, import, export, and generally deal in cotton, linen, silk, and wool threads of all classes and description; to produce cotton, flax, hemp, silk, wool, and other materials suitable or convenient for the manufacture of thread. Also to manufacture, buy, sell, export, import, and generally deal in flax, spools, bobbins, boxes, labels, and all kinds of machines and tools necessary or useful in the manufacture of threads.

### FORM 197. — TOBACCO.

To plant, grow, cultivate, cure, and manufacture tobacco. To export, import, and generally deal in leaf and fine cut tobacco, cigars, cheroots, and cigarettes. Also to purchase, lease, or otherwise acquire, to construct, maintain, and operate, tobacco factories, wholesale agencies, and depots for the curing, storing, manufacture, and sale of tobacco, cigars, cheroots, cigarettes, and smokers' supplies. Also to buy, sell, import, export, and generally deal in pipes, cigar and cigarette holders, cigar cutting machines, and smokers' supplies of all kinds.



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### FORM 198. — TRADING STAMP COMPANY.

To design, manufacture, print, and engrave premium stamps, tickets, or coupons, and to use, sell, or otherwise dispose of the same to merchants, manufacturers, or to any person, firm, copartnership, or corporation, for distribution or sale by them to their customers; to exchange such stamps, tickets, or coupons for goods, chattels, wares, and merchandise; to co-operate and contract with merchants, manufacturers, copartnerships, corporations, or other persons for the purpose of furnishing them with premium stamps, tickets, or coupons for their customers, and to give them goods, chattels, wares, and merchandise in exchange for such premium stamps, tickets, or coupons; to carry on a general advertising business in all its branches, both as principals and agents; to carry on the business of printers, stationers, engravers, designers, and dealers in paper; to establish and conduct a general store for the sale or exchange of goods, chattels, wares, and merchandise of any and every class and description.

### FORM 199. — TRAIN CONTROL.

To manufacture, buy, sell, import, export, install, maintain, and generally deal in railroad switches, train-controlling devices, signals, and equipment; to manufacture, buy, sell, export, import, and generally deal in iron, steel, manganese, coke, copper, lumber, and all or any articles consisting or partly consisting of iron, steel, copper, wood, or other materials, and all or any products thereof; to acquire by purchase or otherwise land or buildings, mills, plants, machinery, secret processes, or other things found necessary or convenient for the purposes of the company. To manufacture or purchase, or both, all tools, machinery, and appliances necessary, proper, or convenient for the carrying on of the said business.

### FORM 200. — TRANSPORTATION COMPANY.

To carry on the business of engaging, receiving, transporting, and delivering merchandise upon freight or for hire, between any port of the United States and any other port or ports of the United States, or between any foreign port or ports and any port or ports of the United States; the business of owning or chartering vessels therefor; the business of operating vessels in such service; the business of contracting or arranging for the transportation of merchandise to or from any of such ports by rail, boat, or otherwise, or to any inland or coastwise place or places. To enter into contracts for the carriage of mails, passengers, goods, and merchandise by any means, either by its own vessels, railways, or conveyances, or by or over the vessels, railways, or conveyances of others; to construct, purchase, and operate steamships and other vessels of any class, and generally carry on the business of shipowners; to construct bridges, buildings, and machinery, engines, cars, and other equipments, railroads, ships, elevators, viaducts, canals, and water ways, and any other means of transportation, and to sell the same or otherwise to dispose thereof, or to maintain and operate the same. To gather, receive, distribute, and deliver goods and merchandise, and to carry on a general transportation, freight, and express business, and to that end to own and operate its own vessels, cars, and vehicles of whatsoever nature or description, or to contract with transportation, railway, express, and other companies for the use of their vessels, cars, and vehicles of whatsoever nature or description, by this company, or to contract with said companies for the collection, transportation, or distribution of goods, wares, and merchandise to and from all points and places where it may seem advantageous and profitable to carry on such business. To carry on the business of storage, wharfage, warehousing, and forwarding, and the doing of every act or acts, thing or things, incidental or growing out of or connected with said business, including the owning, leasing, holding, erecting, and maintaining of docks, bulkheads, piers, basins, and warehouses; the storage of all kinds of goods, wares, and merchandise; the storage and docking of ships, steam vessels, and boats of every kind and description; the loading and unloading thereof; the issue of storage, dock, and ware-

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house receipts, negotiable and non-negotiable, covering all kinds of goods, wares, and merchandise; the collection and receipt of dockage, wharfage, and storage dues and other compensation; the loaning of money on the pledge of goods, wares, and merchandise and other property, or on the pledge of storage, dock, or warehouse receipts therefor; and the advancing of freights, duties, fire and marine insurance, and liens of every kind and nature upon goods, wares, and merchandise received on storage or for the purpose of being warehoused.

### FORM 201. — TROPICAL TRADING COMPANY.

To buy, sell, import, export, manufacture, and generally deal in timber of all kinds and descriptions; to manufacture, prepare, sell, and generally deal in cabinet and other woods; to build, maintain, and operate mills, saw-mills, flour-mills, and factories to be operated by steam, electricity, or other power; to buy, sell, and generally deal in lands; to establish, maintain, and operate plantations; to produce, manufacture, purchase, market, export, import, and generally deal in rubber, chicle gum, tobacco, coffee, fruits, grain, live stock, and any and all kinds of tropical and sub-tropical products.

### FORM 202. — TRUST COMPANY.

To act as trustee for individuals and corporations, to receive deposits, issue foreign and domestic bills of exchange, and generally to engage in a banking business in all its various branches. To carry on and undertake any business, undertaking, transaction, or operation commonly carried on or undertaken by capitalists, promoters, financiers, contractors, merchants, commission men and agents, and in the course of such business to draw, accept, endorse, acquire, and sell all or any negotiable or transferable instruments and securities, including debentures, bonds, notes, and bills of exchange. To sell on commission, subscribe for, acquire, hold, sell, exchange, and deal in shares, stock, bonds, obligations, or securities of any public or private corporation, government, or municipality, and the company shall have express power to hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of, shares of the capital stock, bonds, debentures, or other evidences of indebtedness created by any corporation or corporations, and while the owner thereof to exercise all the rights and privileges of ownership, including the right to vote thereon. To form, promote, and assist financially or otherwise companies, syndicates, partnerships, and associations of all kinds, and to give any guarantee in connection therewith or otherwise for the payment of money, or for the performance of any obligation or undertaking. To acquire, improve, manage, work, develop, and exercise all rights in respect of, lease, mortgage, sell, dispose of, turn to account and otherwise deal with property of all kinds, and in particular business concerns and undertakings. To act as fiscal agent for persons, firms, and corporations. To buy or otherwise acquire, to own, hold, mortgage, pledge, sell, assign, and transfer or otherwise dispose of, and to invest, trade, and deal in any goods, wares, merchandise, and property of every class and description, including patents and patent rights, inventions, or other improvements, trade marks, options, shares, or rights in corporations, real property of any description, including mines, railroads, and also bonds, mortgages, securities of any kind or description or other evidences of indebtedness, and investments or investment securities of any kind or description whatever, to act as agent for the sale or purchase of any of the same, or for any other purpose connected with any of the said above described powers; to promote corporate enterprises of any kind, including industrial enterprises, railroads, mines, real estate companies, banking institutions, and all businesses or enterprises in which the company is interested; to endorse, underwrite, or guarantee stock, securities, or undertakings of any corporation or persons. To raise money by the issue of shares or otherwise, and to invest the moneys so raised in the purchase of, or otherwise to acquire and hold, any of the investments following, that is to say, any stocks, bonds, debentures, shares, scrip, or securities issued or having any guarantee by any government, municipality, trust, local authority, or

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other body, incorporated or unincorporated, public or private, of the United States, or any stock, bonds, debentures, shares, scrip, or securities issued or having any guarantee by any corporation or company incorporated, constituted, or carrying on business in the United States or elsewhere. To borrow or raise money by the issue or sale of any bonds, mortgages, debentures, or debenture stock of the company, and to invest any money so raised in any such investments as aforesaid. To acquire any such investments as aforesaid by original subscription, underwriting, participation in syndicates or otherwise, and whether or not fully paid up, and to make payments thereon as called for, or in advance of calls or otherwise, and to underwrite or subscribe for the same conditionally or otherwise, either with a view to investment or for resale or otherwise, and to vary the investments of the company and generally to sell, exchange, or otherwise dispose of, deal with, and turn to account any of the assets of the company. To negotiate loans, to offer for public subscription, or otherwise aid or assist in placing any such investments as aforesaid; to give any guarantee in relation to any such investments issued by or acquired through the company or otherwise. To offer for public subscription any shares or stock in the capital, debentures, or debenture stock or other securities of, or otherwise to establish, promote, or concur in establishing or promoting, any company, association, undertaking, public or private body. To guarantee the payment of dividends or interest on any stock, shares, debentures, or other securities issued by, or any other contract or obligation of, any such company, association, undertaking, or public or private body. To purchase, lease, hire, or otherwise acquire real and personal property, improved and unimproved, of every kind and description, and to sell, dispose of, lease, convey, and mortgage said property, or any part thereof; to acquire, hold, lease, manage, operate, develop, control, build, erect, maintain for the purposes of said company, construct, reconstruct, or purchase, either directly or through ownership of stock in any corporation, any lands, buildings, offices, stores, warehouses, mills, shops, factories, plants, gas houses, machinery, rights, easements, permits, privileges, franchises, and licenses, and all other things which may at any time be necessary or convenient in the judgment of the board of directors for the purposes of the company. To sell, lease, hire, or otherwise dispose of the lands, buildings, or other property of the company or any part thereof. To hold, purchase, or otherwise acquire, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, shares of the capital stock and bonds, debentures, or other evidence of indebtedness created by any other corporation or corporations, and while the holder thereof to exercise all the rights or privileges of ownership, including the right to vote thereon.

### FORM 203. — TURBINE ENGINES.

To manufacture, construct, purchase, or otherwise acquire, deal in, export, import, sell, hire, lease, use, repair, operate, and maintain ships, vessels, yachts, launches, torpedo boats, tug-boats, and boats and vessels of any and every character, and any and all parts, devices, instruments, engines, machinery, materials, appliances, and things whatsoever adapted to be used in the construction of, upon, or in connection with or in the operation of ships, vessels, yachts, launches, torpedo boats, tug-boats, and boats and vessels of any and every character; also to equip such ships, vessels, yachts, launches, torpedo boats, tug-boats, and boats and vessels of any and every character.

### FORM 204. — TYPESETTING MACHINES.

To manufacture, buy, sell, import, export, and generally deal in machinery for the setting of type, together with all tools, implements, and conveniences necessary or useful in connection therewith.

### FORM 205. — TYPEWRITERS.

To carry on the business of manufacturing, buying, selling, leasing, operating, and distributing writing machines, typewriters, typewriter materials, appliances,

## FORMS AND PRECEDENTS.

fixtures, and other materials and articles connected with or in any wise relating to the manufacture, sale, or use of writing machines and typewriters; to establish, maintain, and operate manufactories, agencies, and depots for the manufacture, purchase, sale, exchange, delivery, and distribution of writing machines, typewriters, typewriter appliances, and supplies; to purchase, lease, or otherwise acquire, buy, sell, assign, and revise; to use or otherwise dispose of any patents, inventions, discoveries, or rights used or employed in the business of manufacturing, buying, selling, or using of writing machines, typewriters, and typewriter supplies.

### FROM 206. — VALVE COMPANY.

To manufacture, buy, sell, import, export, and generally deal in valves, engines, boilers, tools, and machinery of all kinds, classes, and description, and in connection therewith to purchase, lease, or otherwise acquire lands and buildings for the erection of an establishment thereon, and manufactories and workshops with necessary plants, engines, machinery, and structures thereon.

### FORM 207. — VARNISH REMOVER.

To manufacture, buy, sell, import, export, and generally deal in chemical or other products or processes for the removal of varnish and kindred products.

### FORM 208. — WAREHOUSERS.

To carry on the business of warehousing in all of its branches; to receive on consignment or otherwise, to store, sell, and distribute goods on commission or other basis; to export, import, and otherwise deal in goods, wares, and merchandise of all classes and description; to issue warehouse receipts, certificates, and circulars, negotiable or otherwise, to persons warehousing goods, wares, or merchandise with the company; to make advances on loans by way of mortgage, pledge, or deposit of warehouse receipts upon the security of the goods, wares, or merchandise stored with the company or otherwise.

### FORM 209. — WATCHES, JEWELRY, AND DIAMONDS.

To buy, sell, manufacture, export, import, and generally deal in jewelry, watches, and diamonds; to buy, lease, or otherwise acquire, maintain, and operate jewelry stores; to carry on the business of wholesale and retail dealers, watch manufacturers, and diamond merchants.

### FORM 210. — WATER, LIGHT, POWER, AND TRACTION COMPANY.

To purchase, acquire, hold, lease, manage, control, and operate, and to sell, lease, and dispose of to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions, as to this corporation may seem proper, water, water rights, power, privileges and appropriations, for mining, milling, agricultural, domestic, and other uses and purposes; and to develop, control, generally deal in, and dispose of to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions as to this corporation may seem proper, electrical and other power for the generation, distribution, and supply of electricity for light and heat, and for any other uses and purposes to which the same are adapted. To acquire, construct, own, enlarge, maintain, and operate water works, and to supply municipalities and corporations with water and water power, and to acquire, erect, maintain, construct, and enlarge all necessary dams, buildings, plant, machinery, fixtures, and apparatus of every sort for supplying municipalities, corporations, and individuals with water and water power for all purposes, and to carry on the business incidental thereto, including the purpose of acquiring, constructing, enlarging, maintaining, and operating water works, pumping stations, light and power plants, in any city or town in any State of the United States, the District of Columbia, or in any part of the world. To carry on the

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

business of electricians, mechanical engineers, manufacturers, workers and dealers in electricity, motive power, heat, and light, and any business in which the application of electricity or any power, like or otherwise, is or may be useful, convenient, or ornamental, or any other business of a like nature, and to manufacture and produce, trade, and deal in and deal with any article belonging to any such business, and all apparatus, appliances, and things used in connection therewith, or with any inventions or patents; to produce and accumulate electricity and electro-motive force, or other agency, similar or otherwise, and to supply the same for the production, transmission, or use of power for lighting, heating, and motive purposes or otherwise as may be thought advisable; to construct, maintain, and operate works for the supply and distribution of electricity for light, heat, and power; to acquire by purchase or otherwise, to use, operate, and equip subways, conduits, and ducts, and to obtain, accept, and use all permits, and also franchises, municipal or otherwise; to purchase or otherwise acquire and to sell, work, or otherwise deal with land, water, water power, water power supplies, equipment, and works; to undertake, construct, acquire, and carry on works of all kinds relating to any business of the company, and to enter into such contracts and make such arrangements as may be necessary to carry out the same.

### FORM 211. — WATER HEATERS.

To manufacture, buy, sell, import, export, and generally deal in water heaters for domestic and business uses, and in connection therewith to manufacture, buy, sell, import, export, and generally deal in engines, boilers, water pipes, and plumbers' supplies of all classes and description.

### FORM 212. — WATER WORKS.

To construct, purchase, lease, or otherwise acquire, maintain, operate, and sell water works for the purpose of supplying manufactories, corporations, and individuals with water and water power for domestic or business use. Also to construct, purchase, lease, or otherwise acquire, maintain, and sell all necessary power houses, water towers, water-mains and pipes, convenient for the carrying on of the aforesaid line of business.

### FORM 213. — WEIGHING MACHINES.

To manufacture, buy, sell, import, export, lease, operate, and generally deal in weighing machines; to apply for, acquire, by purchase or otherwise, patents pertaining to weighing machines, and to sell or lease the same, together with territorial rights in such patents for weighing machines.

### FORM 214. — WHARF AND WAREHOUSE.

To purchase, lease, or otherwise acquire lands and riparian rights of all classes and description. Also to construct, purchase, lease, or otherwise acquire docks, wharves, piers, warehouses, and public scales.

### FORM 215. — WOOLLEN AND WORSTED.

To manufacture, buy, sell, import, export, and generally deal in woollen and worsted goods and other fabrics manufactured and sold by other concerns engaged in the same general line of business.

### FORM 216. — YARN MILL.

To engage in the business of manufacturers of yarn goods, and in connection therewith to carry on the business of weavers, silk combers, and yarn spinners. Also to purchase, sell, weave, or otherwise manufacture linen cloths and other fabrics.

## GENERAL OBJECT CLAUSES.

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### GENERAL TRADING CLAUSE.

To manufacture, export, import, buy, sell, and generally deal in goods, wares, merchandise, and property of every class and description.

### GENERAL PURCHASING CLAUSE.

To purchase, lease, or otherwise acquire all kinds of personal property which the corporation may deem necessary or convenient for the purposes of its business.

### REAL ESTATE CLAUSE.

To purchase, lease, or otherwise acquire real estate, improved or unimproved, without limit as to amount, in any State or Territory of the United States or foreign country.

### PATENT AND TRADE MARK CLAUSE.

To apply for, acquire, buy, sell, assign, lease, pledge, mortgage, or otherwise dispose of letters patent of the United States or of any foreign country, and all or any rights, territorial or otherwise, thereunder. To apply for, acquire, hold, sell, assign, lease, mortgage, or otherwise dispose of patent rights, licenses, privileges, inventions, trade marks, trade names, and pending applications therefor, relating to or useful in connection with any business of the corporation. To use, manufacture, or grant licenses under any letters patent owned or controlled by the company, and to expend money in experimenting upon and testing the validity or value of any patent rights the company may acquire or proposes to acquire.

### ACQUIRING AN ESTABLISHED BUSINESS.

To acquire by purchase or otherwise property, real or personal, and the good will, rights, and assets of all kinds under such terms and conditions as may be deemed advisable, of any person, firm, or corporation, and to pay for the same in cash, stock, — common or preferred, — bonds, or other securities of the corporation.

### HOLDING STOCK IN OTHER CORPORATIONS.

To subscribe for, purchase, or otherwise acquire, and hold with the same rights of ownership therein as may be permitted to natural persons, the shares, bonds, and obligations of any corporation organized under the laws of any State, Territory, district, or colony of the United States or of any foreign country.

### CONDUCTING BUSINESS IN OTHER STATES.

To conduct its business in all its branches, and to have one or more business offices, and without restriction to contract, buy, sell, lease, mortgage, and convey such real and personal property in any of the States, Territories, districts, or colonial possessions of the United States and any foreign countries as shall from time to time be found necessary and convenient for the purposes of the company's business.

### ACQUISITION OF COMPANY'S OWN STOCK.

The corporation may donate any or all of its surplus earnings or accumulated profits to the purchase or acquisition of its own capital stock from time to time as its board of directors shall determine, and such capital stock so purchased may, if

## **INCORPORATION AND ORGANIZATION OF CORPORATIONS.**

the directors so determine, be deposited in the treasury of the company as treasury stock, to be thereafter disposed of as such treasury stock for the purpose of procuring working capital for the company.

### **BOND CLAUSE.**

To issue bonds to any amount authorized by law for the purpose of securing funds for corporate purposes, and to secure the payment of the same by mortgage or deed of trust upon the whole or any part of the real and personal property of the company at any time held by it.

### **AUTHORIZING THE ISSUANCE OF PROMOTION STOCK.**

To remunerate any person, firm, or corporation for services rendered or to be rendered in selling, pledging, or guaranteeing the disposal of any of the shares of the capital stock of the company, or of any bonds or other securities of the company that may from time to time be issued.

### **POWER TO DISPOSE OF ALL CORPORATE PROPERTY.**

The board of directors shall have the power and authority to sell, assign, mortgage, convey, or otherwise dispose of all the property and assets of the corporation on such terms and conditions as they shall prescribe whether for cash or property or stock and bonds in other corporations.

## **CLAUSES REGULATING BUSINESS.**

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### **CLASSIFICATION OF DIRECTORS.**

The directors shall be divided as equally as possible into classes, to be known as directors of the first, second, third classes, etc. The terms of office of director of the first class shall expire on the first Monday of , 190 , and the second class on the first Monday of , 190 , etc.

### **FORM FOR CLASSIFICATION OF DIRECTORS.**

The members of the board of directors shall be classified with respect to their length of term of office, by dividing them into classes, each consisting of of the whole number of the board of directors.

The directors of the first class shall be elected for a term of one year, and the directors of the second class for a term of two years, and the directors of the third class for a term of three years, etc.

At each annual election the successors of the class of directors whose terms shall expire in that year, shall be elected to hold office for a term of years, so that the term of office of one class shall expire each year.

### **POWER TO ADOPT AND ALTER BY-LAWS.**

The board of directors shall have power without any action on the part of the stockholders to make, alter, amend, or repeal by-laws for the corporation.

### **AUTHORITY TO ISSUE BONDS.**

The directors and officers of the company are authorized to make and issue mortgage bonds at such times and in such amounts as to them shall be deemed advisable.

### **EXECUTIVE COMMITTEE.**

The board of directors may, by means of a resolution adopted by a majority of the whole board at a meeting duly called for that purpose, designate directors

## FORMS AND PRECEDENTS.

to constitute an executive committee, which committee shall have and exercise all the powers and rights of the full board of directors in the management of the business and affairs of the corporation.

### REMOVAL OF OFFICERS AND DIRECTORS.

Any officer or director, whether elected by the stockholders, or named in the certificate of incorporation, or elected or appointed by the board of directors, may be removed at any time, by affirmative vote of a majority of the stockholders of the corporation.

### LIEN ON STOCK FOR INDEBTEDNESS OF THE COMPANY.

The corporation shall at all times have a first lien on all the shares of its stockholders and on dividends declared thereon for any and all indebtedness of such stockholders of the corporation.

### EXAMINATION OF BOOKS BY STOCKHOLDERS.

Except where otherwise provided by law, the board of directors shall have the power to determine under what conditions and regulations, and at what times and places, the accounts and books of the corporation shall be opened to the inspection of stockholders.

### CUMULATIVE VOTING.

The by-laws shall provide that at all elections of directors each stockholder shall be entitled to cast as many votes as shall equal the number of shares of stock held by him, multiplied by the number of directors to be elected, and they shall further provide that such stockholder shall have the right if he so desires to cast all of such votes for a single director or distribute them among the number to be voted for or any two of them as he may see fit.

### HOLDING STOCKHOLDERS' MEETINGS WITHOUT THE DOMICILIARY STATE.

To maintain an office without the State of (here name the domiciliary State), at the city of \_\_\_\_\_, State of \_\_\_\_\_, and any meetings of incorporators, directors, or stockholders of this company may be held at either of said offices or places of business, and the books of this corporation may be kept at either of said offices or places of business, and any incorporator or stockholder entitled to be present and to vote at any organization or stockholders' meetings may be represented and vote at such meeting by proxy in writing.

## PREFERRED STOCK CLAUSES.

### PREFERRED STOCK CLAUSES (Short Form).

The capital stock of the company shall consist of \_\_\_\_\_ shares of common stock of the par value of \$ \_\_\_\_\_ per share, and \_\_\_\_\_ shares of preferred stock of the par value of \$ \_\_\_\_\_ per share. The rights of holders of preferred stock shall be set forth, and determined by the by-laws to be adopted by the corporation at its organization meeting. Such parts of said by-laws as relate to the rights of preferred stockholders shall not thereafter be altered, amended, or rescinded without the consent of all of said preferred stockholders.

### PREFERRED STOCK CLAUSES (Long Form).

The holders of preferred stock shall be entitled to cumulative (or non-cumulative) dividends thereon at the rate of, but not to exceed \_\_\_\_\_ per cent for each



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

and every fiscal year of the company payable out of any and all surplus or net profits annually (semi-annually or quarterly), and when declared by the board of directors. In the event of dissolution or liquidation of the corporation the holders of the preferred stock shall be entitled to receive the par value of their preferred shares out of the assets of the corporation before anything shall be paid thereon to the holders of the common stock. The holders of preferred stock shall (not) be entitled to (any) all voting powers in the corporation. The preferred stock shall be subject to redemption at the option of the corporation at any time after the day of , 190 , at the price of \$ for each share, and the amount of dividends cumulated and unpaid thereon at the date of redemption.

The holders of preferred stock shall have the right at any time to convert the same into common stock of the corporation by presenting the same to the treasurer of the corporation for cancellation, and shall then be entitled to receive forthwith an amount of common stock equal to the par value of the preferred stock so tendered for purposes of conversion into common stock.

### PREFERRED STOCK CLAUSE (Long Form).

From time to time the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the Board of Directors, and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of per centum per annum, and no more, payable quarterly on dates to be fixed by the By-Laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividends on the common stock shall be paid or set apart; so that, if in any year dividends amounting to per centum shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends upon the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared, and the Company shall have paid such cumulative dividends for previous years and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation, or dissolution, or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full, both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock: and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock *pro rata* according to their respective shares.

# FORMS FOR DRAWING CHARTERS IN ALL THE STATES AND TERRITORIES.

## ALABAMA.

### CERTIFICATE OF INCORPORATION

OF THE

COMPANY.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, associate ourselves together for the purpose of forming a corporation under the laws of the State of Alabama, and do declare

I. That the name of the corporation shall be \_\_\_\_\_ Company (or corporation).

II. The objects for which the corporation is formed are:

III. The location of the principal office of the corporation within the State is \_\_\_\_\_

IV. The amount of the capital stock shall be \_\_\_\_\_ dollars (\$ \_\_\_\_\_), to be divided into \_\_\_\_\_ shares of the par value of (\$ \_\_\_\_\_) each. (If preferred stock is desired this clause should read as follows: The amount of the capital stock shall be \_\_\_\_\_ dollars (\$ \_\_\_\_\_), of which \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each shall be common stock and \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) each shall be preferred stock. The preferred stock is entitled to preference and priority over the common stock in manner following, to wit: )

The amount of capital stock with which the company will begin business will be \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

V. That \_\_\_\_\_, residing in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Alabama, is hereby designated by the undersigned as commissioner for said \_\_\_\_\_ Company to receive subscriptions to the capital stock thereof.

VI. The names and post-office addresses of the incorporators and the number of shares subscribed for by each are as follows:

Names.	No. of Shares.	Addresses.
_____	_____	_____
_____	_____	_____
_____	_____	_____

VII. The names and post-office addresses of the directors and officers chosen for the first year are as follows:

Names.	Post-office Addresses.
_____	_____
_____	_____
_____	_____

} Directors.

Officers.	Post-office Addresses.
President,	_____
Vice-President,	_____
Secretary,	_____
Treasurer,	_____

VIII. The duration of the company shall be perpetual.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

IX. The following provisions for the regulation of the business and the conduct of the affairs of the company are hereby established:

*In Witness Whereof*, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

Signed, sealed, and delivered in the presence of:

State of Alabama, }  
County of \_\_\_\_\_ } ss.

I, \_\_\_\_\_, a Notary Public in and for the said County and State, do hereby certify that \_\_\_\_\_, whose names are signed to the foregoing instrument, and who are known to me, have acknowledged before me this day that, being informed of the contents of said instrument, they have severally executed the same voluntarily on the day the same bears date.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 190 .  
\_\_\_\_\_, Notary Public,  
County,  
Alabama.

## TERRITORY OF ALASKA.

### ARTICLES OF INCORPORATION

OF THE

\_\_\_\_\_  
COMPANY.

We, the undersigned, \_\_\_\_\_, residents of the District of \_\_\_\_\_, Territory of Alaska, do by these presents, pursuant to and in conformity with the provisions of Section Five of an Act of Congress, approved March 2nd, 1903, entitled "An Act Amending the Civil Code of Alaska, providing for the Organization of Private Corporations and for other Purposes," associate ourselves together as a body politic and corporate, and we do hereby certify in writing:

*First.* The corporate name and style of our said corporation shall be:

*Second.* The nature and character of the business to be carried on is as follows:

*Third.* The principal place for the transaction of the business of the corporation shall be at \_\_\_\_\_ in the Territory of Alaska.

*Fourth.* The time for the commencement of this corporation shall be the date of the filing of these articles of incorporation in the office of the Secretary of the District of \_\_\_\_\_, Territory of Alaska, and the termination thereof shall be fifty years thereafter.

*Fifth.* The capital stock of the corporation shall be \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars per share. (Also state how the same shall be paid in.)

*Sixth.* The highest amount of indebtedness or liability, direct or contingent, to which this corporation is at any time subject shall be \_\_\_\_\_ dollars.

*Seventh.* The names and residences of the incorporators of this corporation are as follows:

Names.	Addresses.
_____	_____
_____	_____

*Eighth.* The affairs of this corporation shall be conducted by a Board of Directors who shall be elected annually by the stockholders. The names and post-office addresses of the Board of Directors for the first year are:

Names.	Addresses.
_____	_____
_____	_____

## FORMS AND PRECEDENTS.

*Ninth.* The annual meeting of the stockholders for the election of a Board of Directors shall be held on the \_\_\_\_\_ day of \_\_\_\_\_ in each year, and the Board of Directors so elected shall hold office for a period of one year.

*In Witness Whereof*, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

I, \_\_\_\_\_, a Notary Public in and for said County and State, do hereby certify that \_\_\_\_\_, personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged to me that they signed, sealed, and delivered the said instrument in writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this

day of \_\_\_\_\_, 1904.

, Notary Public.

County,

State of \_\_\_\_\_.

## ARIZONA.

### ARTICLES OF INCORPORATION

OF THE

\_\_\_\_\_  
COMPANY.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, have this day associated ourselves together for the purpose of forming a corporation, and for that purpose do adopt the following charter:

*First.* The name of the corporation shall be:

*Second.* The names of the incorporators are:

*Third.* The principal place in which the business of the corporation within the Territory of Arizona is to be transacted is at \_\_\_\_\_ County, Arizona. The name of the agent in charge thereof, and upon whom process may be served in any action, suit, or proceeding that may be had or brought against the company in any of the courts of Arizona, is \_\_\_\_\_, residing at the said city of \_\_\_\_\_, Territory of Arizona.

*Fourth.* The general nature of the business in which this corporation shall engage is as follows, to wit:

*Fifth.* The authorized amount of capital stock of this corporation shall be \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each. The Board of Directors may cause said capital stock or any part thereof to be subscribed or paid for in cash, in the purchase or exchange or transfer of real or personal property or for services rendered, and to issue or cause to be issued any part or all of the capital stock as required, at any time or from time to time, and when so issued it shall be fully paid and non-assessable, and in the absence of fraud in the transaction, the judgment of the Board of Directors as to the value of the property purchased or transferred or exchanged or services rendered shall be conclusive. Shares of stock may be voted by proxy at all stockholders' meetings.

*Sixth.* The time of the commencement of this corporation shall be the date of \_\_\_\_\_ 521

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

the filing of a certified copy of these articles of incorporation in the office of the Territorial Auditor of Arizona, and termination thereof shall be twenty-five years thereafter.

*Seventh.* The affairs of this corporation shall be conducted by a Board of Directors, who shall be elected annually by the stockholders at the annual stockholders' meeting.

*Eighth.* The annual meeting of the stockholders shall be held on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, in \_\_\_\_\_ of each year.

*Ninth.* The highest amount of indebtedness or liability, direct or contingent, to which this corporation is at any time subject, shall be: \_\_\_\_\_

*Tenth.* The private property of the stockholders of this corporation shall be exempt from corporate debts of any kind whatever.

*Eleventh.* (Here insert any clause that may be desired for the regulation of the internal affairs of the corporation.)

*In Witness Whereof*, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(SEAL.)  
(SEAL.)  
(SEAL.)

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, before me, a Notary Public, in and for the State aforesaid, residing therein, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the persons described in, and whose names are subscribed to the foregoing instrument, and they acknowledged to me that they executed the same for the purpose and considerations therein expressed.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal at my office in the said State and County, the day and year last above written.

\_\_\_\_\_, Notary Public.

My commission expires: \_\_\_\_\_

## ARKANSAS.

### ARTICLES OF AGREEMENT AND INCORPORATION OF THE \_\_\_\_\_.

KNOW ALL MEN BY THESE PRESENTS: That the corporators hereinafter named have this day, and by these presents, formed a corporation under and in pursuance of the laws of the State of Arkansas, in that behalf provided, for "Incorporations for manufacturing and other lawful business," and in evidence thereof do hereby execute the following Articles of Incorporation:

*First.* The name of said corporation shall be: \_\_\_\_\_

*Second.* The corporators are: \_\_\_\_\_

*Third.* The place of business is to be located at \_\_\_\_\_, and its office for transaction of business shall be in \_\_\_\_\_ or at such other place as the Board of Directors may select.

*Fourth.* The general nature of the business proposed to be transacted by this corporation is: \_\_\_\_\_

*Fifth.* The amount of the capital stock of said corporation shall be \_\_\_\_\_ dollars; of which \_\_\_\_\_ dollars has been subscribed by the corporators aforesaid, and the residue thereof may be issued and disposed of as the Board of Directors may from time to time order and direct.

## FORMS AND PRECEDENTS.

*Sixth.* The said capital stock shall be divided into \_\_\_\_\_ shares of the value of \_\_\_\_\_ dollars each.

*Seventh.* The affairs and business of the corporation shall be conducted and controlled by a Board of Directors, consisting of \_\_\_\_\_ members, all of whom shall be stockholders of the corporation. Said Board of Directors shall elect one of its members as President, and one of its members as Vice-President, and shall also elect a Secretary and Treasurer.

*Eighth.* The first election of Directors shall be held immediately after the organization of the corporation, and said Directors shall serve for one year and until their successors are elected.

*Ninth.* The Board of Directors are empowered to ordain and establish all by-laws and regulations necessary to the management and business of said corporation, and alter and repeal same at pleasure.

*Tenth.* The first meeting of said corporation or organization shall be held in \_\_\_\_\_ at the office of \_\_\_\_\_ at \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_, 190 . The subscribers hereto hereby waive notice of said meeting.

*In Testimony Whereof*, we have hereunto set our hands on this, the \_\_\_\_\_ day of \_\_\_\_\_, 190 .

### CERTIFICATE.

*Whereas*, \_\_\_\_\_ have associated themselves together as a body politic and corporate, to be known as \_\_\_\_\_, and \_\_\_\_\_,

*Whereas*, The said corporators, being the subscribers to the capital stock of the said corporation, have waived the fifteen days' notice as required by law and called a meeting for organization, to be held in \_\_\_\_\_ at the office of \_\_\_\_\_ at \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_, 190 .

*Whereas*, At the time and place above set out, a meeting of the subscribers aforesaid was held to organize said corporation and elect \_\_\_\_\_ Directors; and

*Whereas*, At said meeting the following gentlemen were elected Directors, to wit: \_\_\_\_\_, and \_\_\_\_\_,

*Whereas*, At a meeting of the said Board of Directors \_\_\_\_\_ was elected President, and \_\_\_\_\_ was elected Vice-President, and \_\_\_\_\_ was elected Secretary, and \_\_\_\_\_ was elected Treasurer:

Now, Therefore, The said \_\_\_\_\_ as President, and the said \_\_\_\_\_ as President, do, in pursuance of law, issue this, their Certificate, verified by their oaths, and do hereby certify as follows:

*First.* Said corporation is formed for the purpose of:

*Second.* Its capital stock is \_\_\_\_\_ dollars, divided into shares of \_\_\_\_\_ dollars each.

*Third.* \_\_\_\_\_ dollars of capital stock have been actually paid in by the subscribers hereto.

*Fourth.* The names of the stockholders and the number of shares owned by them, respectively, is as follows:

Names.	No. of Shares.
_____	_____
_____	_____
_____	_____

*In Testimony Whereof*, the said \_\_\_\_\_, President of the said corporation, and \_\_\_\_\_, a majority of the Board of Directors of said corporation have hereunto set their hands on this \_\_\_\_\_ day of \_\_\_\_\_, 190 .  
\_\_\_\_\_, President.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
*Directors.*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
*Directors.*  
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# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

State of Arkansas, }  
County of } ss.

on their oaths say that the matters and things in the foregoing certificate set out are true, to the best of their knowledge and belief.

(Signed)

Subscribed and sworn to before me this            day of            , 190 .

*In Testimony Whereof*, I have hereunto set my hand and seal of office. .

## CALIFORNIA.

### ARTICLES OF INCORPORATION

OF THE

COMPANY.

KNOW ALL MEN BY THESE PRESENTS : That we, the undersigned, a majority of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California.

*And We Hereby Certify,*

*First.* That the name of said corporation shall be:

*Second.* That the purpose for which it is formed is:

*Third.* That the place where the principal business of said corporation is to be transacted is :

*Fourth.* That the term for which said corporation is to exist is            years, from and after the date of its incorporation.

*Fifth.* That the number of Directors of said corporation shall be not less than three, and that the names and residences of Directors, who are appointed for the first year, and to serve until the election and qualification of their successors, are as follows, to wit :

Names.

Residences.

*Sixth.* That the amount of the capital stock of said corporation is            dollars, and the number of shares into which it is divided is            , of the par value of            each.

*Seventh.* That the amount of said capital stock which has been actually subscribed is            dollars, and the following are the names of the persons by whom the same has been subscribed, to wit :

Names of Subscribers.

No. of Shares.

Amount.

*In Witness Whereof*, we have hereunto set our hands and seals, this            day of            , A. D. 190 .

Signed and sealed in the presence of

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State of            }  
County of            } ss.

On this            day of            , in the year A. D. nineteen hundred and            , before me,            County, personally appeared            , known to me to be the person whose name            subscribed to the within instrument, and acknowledged to me that            executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal, the day and year last above written.

(SEAL.)

, Notary Public,  
County.

FORMS AND PRECEDENTS.

State of                    }  
County of                } ss.

I,                   , County Clerk of                   , County of                   , State of                   ,  
do hereby certify the within to be a full, true, and correct copy of Articles of Incorporation of                   as remains on file in this office.

*In Witness Whereof*, I have hereunto set my hand and affixed my Official Seal,  
this            day of                   , A. D. 190 .

B

                  , Clerk.  
                  , Deputy Clerk.

COLORADO.

CERTIFICATE OF INCORPORATION

OF

*Know all Men by these Presents:* That we,                   residents of the State of                   , have associated ourselves together as a corporation under the name and style of "The                   Company," for the purpose of becoming a body politic and corporate, under and by virtue of the laws of the State of Colorado, and in accordance with the provisions of the laws of said State of Colorado, we do hereby make, execute, and acknowledge these triplicate certificates in writing of our intention so to become a body corporate by virtue of said laws, which when filed shall constitute the articles of incorporation of                   .

*First.*

The corporate name and style of our said company shall be :

*Second.*

The objects for which our said company is formed and incorporated are for the following purposes, to wit: (the statement of objects must be very full, as under Colorado laws there can be no amendment so as to enlarge the corporate purposes).

*Third.*

The capital stock of said company is           dollars, divided into           shares of the par value of           dollars each, and said stock shall be non-assessable.

*Fourth.*

Said company is to exist for           years.

*Fifth.*

The affairs and management of this company is to be under the control of a Board of           Directors, and           are hereby selected to act as said Board of Directors, and to manage the affairs and concerns of the said company for the first year of its corporate existence.

*Sixth.*

The operations of the said company will be carried on in the County of           , State of Colorado, and outside of said State of Colorado, in any State or Territory of the United States, and the principal place of business and business office of said company shall be located in the City of           , in the County of           , and State of Colorado aforesaid.

*Seventh.*

The Board of Directors shall have power to make such prudential by-laws as they may deem proper for the management of the affairs of this company, according to the statute in such case made and provided.



# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## *Eighth.*

Meetings of the Board of Directors may be held without the State of Colorado, if the by-laws so provide.

*In Testimony Whereof*, we have hereunto set our hands and seals this day of \_\_\_\_\_, 190 .

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

I, \_\_\_\_\_, a Notary Public in and for said County and State, do hereby certify that \_\_\_\_\_, personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument in writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 190 .  
\_\_\_\_\_, *Notary Public.*

My commission expires \_\_\_\_\_

## CONNECTICUT.

### CERTIFICATE OF INCORPORATION.

We, the subscribers, certify that we do hereby associate ourselves as a body politic and corporate under the statute laws of the State of Connecticut; and we further certify:

*First.* That the name of the corporation is (a) The \_\_\_\_\_ Company, Corporation, (b) \_\_\_\_\_ Incorporated.

*Second.* That said corporation is to be located in the town of \_\_\_\_\_, in the State of Connecticut.

*Third.* That the nature of the business to be transacted, and the purposes to be promoted or carried out, by said corporation, are as follows:

*Fourth.* That the amount of the capital stock of said corporation hereby authorized is \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each, which stock shall be divided into classes as follows:

*Fifth.* That the amount of capital stock with which this corporation shall commence business is \_\_\_\_\_ dollars.

*Sixth.* That the duration of said corporation is unlimited.

*Seventh.* The following provisions for the regulation of the business and the conduct of the affairs of the corporation are hereby established:

### SIGNATURES OF INCORPORATORS.

Name.	Residence.
_____ of	State of _____
_____ of	State of _____
_____ of	State of _____
_____ of	State of _____
_____ of	State of _____
_____ of	State of _____
_____ of	State of _____
_____ of	State of _____
_____ of	State of _____
_____ of	State of _____

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 190 .  
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# FORMS AND PRECEDENTS.

State of                    } ss.  
County of

Personally appeared                   , being all of the incorporators of The  
and made solemn oath to the truth of the foregoing  
certificate by them respectively subscribed, before me.

, Notary Public.

## CERTIFICATE OF ORGANIZATION.

The undersigned, a majority of the directors of The  
located in the town of                   , hereby certify as follows:

*First.* That the amount of the authorized capital stock subscribed for is  
shares, being                   shares of preferred stock and  
shares of common stock, amounting to                   dollars, and being not less  
than the full amount of                   dollars, with which the incorporators in the  
certificate of incorporation stated the company would begin business.

*Second.* That the amount paid thereon in cash is                   dollars.

*Third.* That the amount paid thereon in property other than cash is  
dollars.

*Fourth.* That                   dollars has been paid upon each share subscribed  
for except                   shares, upon which                   dollars only has been paid.

*Fifth.* That the name, residence, and address of each of the original subscribers to  
said stock, with the number and class of shares subscribed for by each, are as follows:

Name.	Residence.	P. O. Address.	No. of Shares. Preferred.	No. of Shares. Common.
-------	------------	----------------	------------------------------	---------------------------

*Sixth.* That the directors and officers of said corporation have been duly  
elected, and that its by-laws have been adopted.

*Seventh.* The name, residence, and post-office address of each of the officers and  
directors of said corporation are as follows:

Name.	Residence.	P. O. Address.
President,		
Vice-President,		
Treasurer,		
Asst. Treasurer,		
Secretary,		
Asst. Secretary,		

Directors.	Residence.	P. O. Address.
------------	------------	----------------

*Eighth.* The location of its principal office in this State is No.  
Street,                   , and the name of the agent or person in charge thereof on  
whom process against it may be served is                   .

Dated at                   this                   day of                   .

_____	} A Majority of the Directors.
_____	
_____	
_____	

State of Connecticut, } ss.  
County of

Personally appeared

signers of the foregoing certificate of organization, a majority of the Directors of  
The                   , and made oath to the truth of the  
same before me.

, Notary Public.  
, Justice of the Peace.

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## DELAWARE.

### CERTIFICATE OF INCORPORATION.

*This is to Certify,* that the undersigned do hereby associate themselves to establish a corporation under and by virtue of the provisions of an Act of the General Assembly of the State of Delaware, entitled "An Act Providing a General Corporation Law," and do severally agree to take the number of shares of capital stock as hereinafter stated, and that

*First.* The name of the corporation is :

*Second.* The principal office or place of business of the corporation in the State of Delaware is to be located in the City of \_\_\_\_\_, \_\_\_\_\_ County, and said office is to be registered with \_\_\_\_\_

*Third.* The nature of the business and the objects and purposes proposed to be transacted, promoted, or carried on by the corporation are as follows :

*In General* to carry on any other business in connection therewith, whether manufacturing or otherwise, and with all the powers conferred by the laws of Delaware under the act hereinbefore referred to.

It is the intention that the objects specified in the third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause or paragraph in this charter, but that the objects specified in each of the clauses of this paragraph shall be regarded as independent objects :

*Fourth.* The amount of the total authorized capital stock of the corporation is \_\_\_\_\_ dollars divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each. The amount of the capital stock with which the corporation will begin business is \_\_\_\_\_ dollars.

*Fifth.* The names and places of residence of the original subscribers to the capital stock are :

Name.	Residence.	No. of Shares.
-------	------------	----------------

*Sixth.* The corporation shall have perpetual existence.

*Seventh.* The officers and persons by whom the affairs of the corporation are to be conducted are its Directors, who may act through a President, Vice-President, Secretary, and Treasurer, and such assistants to them and such subordinate officers, agents, and employees as may be selected pursuant to the By-Laws of the corporation, the resolutions of said Directors or authority given by them.

Directors shall be elected at the principal office or place of business of the company, at the annual election to be held by the stockholders on the \_\_\_\_\_ day of \_\_\_\_\_ in each year, between the hours of \_\_\_\_\_ M. and \_\_\_\_\_ M.

*Eighth.* The private property of the stockholders shall not be subject to the payment of corporate debts.

*Ninth.* The Board of Directors shall have power, without the assent or vote of the stockholders, to make, alter, amend, and repeal the By-Laws of this corporation, to authorize and cause to be executed mortgages and liens upon the real and personal property of this corporation.

The Directors shall from time to time determine whether and to what extent, and at what times and places, and under what conditions the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the Directors, or by a resolution of the stockholders.

The Directors shall have power to hold their meetings, and to keep the books of the corporation (except the stock and transfer books or duplicates thereof) outside of this State, at such places as may be from time to time designated by them.

The corporation may conduct its business in the State of Delaware, in other States, the District of Columbia, the Territories and Colonies of the United States and in foreign countries, and may have one or more offices out of this State, and

# FORMS AND PRECEDENTS.

may hold, purchase, mortgage, lease, and convey real and personal property out of the State of Delaware.

*Witness* our hands and seals this                      day of                      , A. D. 190 .

\_\_\_\_\_ (L. S.)  
 \_\_\_\_\_ (L. S.)  
 \_\_\_\_\_ (L. S.)

In the presence of :

\_\_\_\_\_  
 State of                      }  
 County of                      } ss.

*Be It Remembered*, that on this                      day of                      , A. D. 190 , personally came before me,                      , a Notary Public for the State of                      (Here insert names of each of the original corporators.) the original corporators named in the foregoing certificate, who signed and sealed the same, known to me personally to be such, and severally acknowledged the same to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

*In Witness Whereof*, I have hereunto set my hand and seal of office the day and year aforesaid.  
 (SEAL.)                      , *Notary Public*.

## DISTRICT OF COLUMBIA.

### CERTIFICATE OF INCORPORATION.

We, the undersigned, being all of the trustees of the                      , a majority of whom are residents of the District of Columbia, do by these presents, pursuant to and in conformity with the provisions of six hundred and five (605) and six hundred and six (606) of an Act of Congress, approved March 3rd, 1901, entitled "An Act to establish a Code of Law for the District of Columbia," and with the amendments thereto made by an Act approved June 30th, 1902, entitled "An Act to amend an Act entitled 'An Act to establish a Code of Law for the District of Columbia,' " associate ourselves together as a body politic and corporate, and we do hereby certify in writing :

- First.* That the name of the company shall be :
- Second.* That the purposes for which said corporation is formed are :
- Third.* That the existence of this company shall be perpetual.
- Fourth.* That the capital stock of this company shall be                      dollars, divided into shares of the par value of                      dollars each.
- Fifth.* That the number of trustees who shall manage the concerns of the company for the first year or until their successors are elected shall be, namely :  
 Names.                      Residences.  
 \_\_\_\_\_  
 \_\_\_\_\_

The Board of Trustees, by the affirmative vote of a majority of the whole Board, may appoint from the Trustees an Executive Committee of                      members, of which a majority shall constitute a quorum, and to such extent as may be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the Board of Trustees.

*Sixth.* That the place in the District of Columbia in which the operations of the company are to be carried on is at                      in the City of Washington, District of Columbia.

*Witness* our hands this                      day of                      190 .

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

City of Washington, }  
District of Columbia, } ss.

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby certify that \_\_\_\_\_, whose names are signed to the writing hereto annexed, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 190\_\_\_\_, personally appeared before me in the District of Columbia on the day and year aforesaid, and separately, severally, and individually acknowledged the same before me, and that they severally signed the same for the purposes therein set forth.

Given under my hand and notarial seal \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.  
\_\_\_\_\_, Notary Public.

## FLORIDA.

(Form for publication of notice of intention to apply for charter.)

### NOTICE OF INCORPORATION.

The undersigned hereby give notice that on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M, or as soon thereafter as they can be heard, they will apply to the Honorable \_\_\_\_\_, Governor of the State of Florida, at his office, in the Capitol Building of said State, in the City of Tallahassee, for Letters Patent incorporating them, their associates and successors, into a body politic and corporate in deed and in law, under the name of \_\_\_\_\_ Company, under the following Charter and Articles of Incorporation, the original of which will be on file in the office of the Secretary of State of said State of Florida, at the City of Tallahassee, during the time required by law for the publication of this notice.

(Names of incorporators.)

### CHARTER OF THE \_\_\_\_\_ COMPANY.

The undersigned hereby agree to become associated together, and do hereby associate themselves together for the purpose of becoming a body politic and corporate under the laws of the State of Florida, the provisions of which are hereby accepted. The following Articles of Incorporation shall constitute and become its Charter upon the issuance of Letters Patent according to law :

1.

The name of this corporation shall be \_\_\_\_\_. Its principal office and place of business shall be the City of \_\_\_\_\_, \_\_\_\_\_ County, Florida. Branch offices may be established at such other places as may be selected by the Board of Directors.

2.

The general nature of the business to be transacted by the said corporation shall be :

3.

The amount of capital stock of this corporation shall be \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollar each : said capital stock shall be paid for in lawful money of the United States, ten per cent of which shall be paid within ten days after Letters Patent shall have been granted and before said corporation shall transact any business. The unpaid balances due on stock of the subscribers hereto shall be paid in lawful money of the United States in such instalments and within such time as may be designated by the Board of Directors, provided that subscribers shall be entitled to ten days' notice of demand for such deferred payments. The remaining stock shall be sold by the Directors from time to time, as the same may be needed, at not less than its par value.

## FORMS AND PRECEDENTS.

4.

This corporation shall exist for a period of \_\_\_\_\_ years, unless sooner dissolved according to law.

5.

The business of this corporation shall be conducted by a Board of not less than \_\_\_\_\_ nor more than \_\_\_\_\_ Directors.

The Board of Directors shall select from themselves a President, Vice-President, Secretary, and Treasurer. One person may hold the office of Secretary and Treasurer. Said Board of Directors shall have authority to appoint all necessary agents of this corporation.

Annual meetings of the stockholders shall be held at the principal offices of the corporation on the \_\_\_\_\_ in \_\_\_\_\_ of each year, at ten o'clock A. M. or as soon thereafter as practicable, at which the Board of Directors shall be duly elected by the stockholders.

The By-Laws for the government of this corporation shall be adopted at the first annual meeting of the stockholders, or as soon thereafter as practicable.

Until a Board of Directors shall have been first duly chosen by the stockholders, the business of the said corporation shall be conducted by the following named persons and officers :

, *President.*  
, *Vice-President.*  
, *Secretary.*  
, *Treasurer.*

Temporary By-Laws may be adopted by said officers until the first annual meeting of the stockholders.

6.

The highest amount of indebtedness or liability this corporation shall at any time subject itself is \_\_\_\_\_ dollars.

7.

The names and residences of the subscribers to these Articles of Incorporation, together with the amount of capital subscribed by each, are as follows :

Names.	Residences.	No. of Shares.
--------	-------------	----------------

*In Witness Whereof*, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

(Signatures of subscribers.)

Witness :

State of Florida, }  
County of \_\_\_\_\_ } ss.

I, \_\_\_\_\_, a Notary Public for the State of Florida at large, do hereby certify that \_\_\_\_\_, who are to me well known, this day appeared before me and each for himself acknowledged that he signed the foregoing Articles of Incorporation and the accompanying notice for the uses and purposes therein stated.

*In Witness Whereof*, I have hereunto set my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

, *Notary Public.*

State of Florida at large.  
Commission expires \_\_\_\_\_

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## GEORGIA.

### APPLICATION FOR CHARTER.

State of Georgia,  
County of \_\_\_\_\_,

To the Superior Court of said County.

The petition of \_\_\_\_\_ respectfully shows :

I. That they desire for themselves, their associates, successors, and assigns, to be constituted a body corporate under the name and style of \_\_\_\_\_ Company, for the term of twenty years with the privilege of renewal at the expiration of said time as provided by law.

II. They desire for said corporation the right to buy, sell, hold, encumber, and otherwise dispose of real and personal property, which may be necessary and advantageous to the purposes of said corporation, to sue and be sued, and to have a common seal, to receive donations by gift or will, to make by-laws for its government, elect directors for the management of its affairs and confer upon them the right to elect officers and appoint employees, together with all other rights, powers, and privileges, incident, useful, or necessary to carry into effect the purposes of the corporation as hereinafter set forth or for securing debts due it.

III. The object of the corporation is pecuniary gain to its stockholders.

IV. The particular business proposed to be carried on by said corporation is :

V. The capital stock of said corporation shall be \_\_\_\_\_ dollars, divided into shares of \_\_\_\_\_ dollars each ; at least ten per cent of which is to be actually paid in before commencing business. But petitioners desire that said corporation shall have the right to increase said capital stock to any amount not exceeding \_\_\_\_\_ dollars, whenever the holders of a majority of the stock may so determine.

VI. The principal place of business of said corporation shall be in the City of \_\_\_\_\_, County and State aforesaid, but petitioners desire that said corporation shall have the right to establish branch offices or agencies at any other places, either within or without the State of Georgia, as the holders of a majority of the stock may determine upon.

Wherefore petitioners pray that after this petition has been filed and published in accordance with the law an order be passed by the Court declaring them a body corporate under the name and style aforesaid, and granting to said corporation all the right, power, and privileges set out and prayed for in this application, or which may be incident, usual, and necessary under the laws of said State, for the purposes of their incorporation. And your petitioner will ever pray, etc.

\_\_\_\_\_, *Petitioner's Attorney.*

## IDAHO.

### ARTICLES OF INCORPORATION

OF THE

\_\_\_\_\_  
COMPANY.

*Know all Men by these Presents:* That we, the undersigned, at least one of whom is a *bona fide* resident of the State of Idaho, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Idaho. And we hereby certify :

*First.* That the name of the corporation shall be :

*Second.* That the purpose for which it is formed shall be :

*Third.* That the place where the principal business is to be transacted is :

*Fourth.* That the term for which it is to exist is \_\_\_\_\_ (not to exceed fifty years) from and after the date of its incorporation.

# FORMS AND PRECEDENTS.

*Fifth.* That the number of its directors (or trustees) shall be (a majority must be, in all cases, citizens, and actual *bona fide* residents within the State), and the names and residences of those who are appointed for the first year are :

*Sixth.* That the amount of the capital stock of said corporation is dollars, and the number of shares into which it is divided is , of the par value of dollars each.

*Seventh.* That the amount of capital stock which has been actually subscribed is dollars, which has been subscribed by the following persons :

Names of Subscribers.	No. of Shares.	Par Value.
-----------------------	----------------	------------

*In Witness Whereof*, we have hereunto set our hands this day of , A. D. 190 .

Signed and executed in the presence of :

State of }  
County of } ss.

On this day of , A. D. 190 , before me personally appeared , known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

(SEAL-)

## ILLINOIS.

State of Illinois, }  
County of } ss.

To , Secretary of State :

We, the undersigned, , propose to form a corporation, under an Act of the General Assembly of the State of Illinois, entitled "An Act Concerning Corporations," approved April 18th, 1872, and all acts amendatory thereof; and for the purpose of such organization we hereby state as follows, to wit :

*First.* The name of such corporation is :

*Second.* The objects for which it is formed are :

*Third.* The capital stock of the company shall be dollars.

*Fourth.* The amount of each share is dollars.

*Fifth.* The number of shares is .

*Sixth.* The location of the principal office is at No. Street, in the City of , in the County of , State of Illinois,

*Seventh.* The duration of the corporation shall be (not to exceed ninety-nine) years.

State of Illinois, }  
County of } ss.

I, , a Notary Public in and for the County of and State of Illinois, do hereby certify that on the day of , 190 , personally appeared before me , to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that they executed the same for the purposes therein set forth.

*In Witness Whereof*, I have hereunto set my hand and seal the day and year above written.

, Notary Public.

(SEAL.)



# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

To

Secretary of State of the State of Illinois :

*The Commissioners*, duly authorized to open Books of Subscription to the capital stock of the \_\_\_\_\_ Company, pursuant to license heretofore issued, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 \_\_\_\_\_, do hereby report that they opened Books of Subscription to the Capital Stock of said Company, and that the said stock was fully subscribed; that the following is a true copy of such subscription, viz. :

We, the undersigned, hereby severally subscribe for the number of shares set opposite our respective names, to the Capital Stock of \_\_\_\_\_ Company, and we severally agree to pay the said Company, for each share, the sum of \_\_\_\_\_ dollars.

Name.	Shares.	Amount.
_____	_____	_____
_____	_____	_____
_____	_____	_____

That the aforesaid stockholders waived notice of the time, place, and object of the meeting of stockholders herein next set forth, which was held on \_\_\_\_\_, A. D. 190 \_\_\_\_\_, at which meeting directors were elected as stated herein, and the following is the original waiver :

We, the undersigned, being all of the stockholders of the \_\_\_\_\_ Company, organized under the laws of the State of Illinois, do hereby severally waive notice of the time and place of the \_\_\_\_\_ meeting of the stockholders of said company, and the purpose thereof, and any and all every notice required by the laws of the State of Illinois.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

That on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 \_\_\_\_\_, at the \_\_\_\_\_, Illinois, at the hour of \_\_\_\_\_ M., they convened a meeting of the subscribers aforesaid pursuant to notice required by law, which said notice was deposited in the post-office, properly addressed to each subscriber, ten days before the time fixed therein, a copy of which said notice is as follows, to wit :

To

You are hereby notified that the Capital Stock of \_\_\_\_\_ has been fully subscribed, and that a meeting of the subscribers of such stock will be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., for the purpose of electing a Board of Directors for said Company and for the transaction of such other business as may be deemed necessary.

Signed

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ } *Commissioners.*

That said subscribers met at the time and place in said notice specified, and proceeded to elect Directors, and that the following persons were duly elected for the term of \_\_\_\_\_ year \_\_\_\_\_, viz. :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FORMS AND PRECEDENTS.

And that the post-office address of the business office of said Company is at  
Number \_\_\_\_\_ Street in the City of \_\_\_\_\_, in the County of \_\_\_\_\_,  
and State of Illinois.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ } *Commissioners.*

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 \_\_\_\_\_, personally appeared before me,  
a Notary Public in and for said County in said State, \_\_\_\_\_, and made oath  
that the foregoing report by them subscribed is true in substance and in fact.  
\_\_\_\_\_, *Notary Public.*

INDIANA.

ARTICLES OF INCORPORATION

OF THE

\_\_\_\_\_  
COMPANY.

We, the undersigned, hereby associate ourselves together pursuant to the statutes of the State of Indiana for the organization of corporations by the following written articles:

ART. ONE. — NAME.

The name shall be:

ART. TWO. — CAPITAL STOCK.

The capital stock of this association shall be \_\_\_\_\_ dollars, divided into  
shares of \_\_\_\_\_ dollars each.

ART. THREE. — OBJECT.

The object of this association and the proposed plan for the transaction of its business shall be:

(To be stated in all cases. Care should be taken to name as broad an object as possible and at the same time to avoid mentioning any of the proposed powers of the corporation.)

ART. FOUR. — PLACE OF OPERATIONS.

The business of this corporation shall be carried on in:

(To be stated in all cases. Where the work is from one point to another, this should be stated. For railroads, name all counties through which the road passes and give length as near as possible.)

ART. FIVE. — NUMBER OF DIRECTORS.

There shall be \_\_\_\_\_ directors for this corporation, who after the first year shall be elected annually by the stockholders. All the corporate officers shall be appointed by the directors.

ART. SIX. — DIRECTORS FOR FIRST YEAR.

The following directors shall manage the business and prudential concerns of this corporation for the first year of its existence.

ART. SEVEN. — TERM OF EXISTENCE.

The association shall have an existence of \_\_\_\_\_ (not to exceed fifty) years from the date hereof.

*In Witness Whereof*, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 \_\_\_\_\_.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

(The subscribers affix, in addition to their names, their residences, and, if a stock corporation, the number of shares taken by each. In the case of savings banks state occupation and post-office address. Articles for the incorporation of educational and religious corporations must be sworn to. Articles for Board of Trade, steam packet, telegraph, telephone, building and loan, health resort, Y. M. C. A., boards of relief for orphans, etc., and manufacturing companies must be acknowledged as deeds are acknowledged. All others are signed merely.)

State of Indiana, } ss.  
County of

*Be It Remembered*, that on this            day of           , 190 , before me, a Notary Public, in and for            County, Indiana, duly commissioned and qualified, personally appeared (names of incorporators) the parties named in the foregoing Articles of Incorporation, and severally acknowledged the execution of the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

*Notary Public,*  
County, Indiana.

## INDIAN TERRITORY.

### ARTICLES OF AGREEMENT AND INCORPORATION

OF

**KNOW ALL MEN BY THESE PRESENTS :** That the Corporators hereinafter named have this day, and by these presents, formed a Corporation under and in pursuance of an Act of Congress, approved February 18, 1901, entitled "An Act to put in force in the Indian Territory certain provisions of the Laws of Arkansas relating to Corporations and to make said provisions applicable to said Territory," which said Act provides for incorporations for manufacturing and other lawful business purposes in the Indian Territory, and in evidence thereof do hereby execute the following Articles of Incorporation :

FIRST. The name of said Corporation shall be :

SECOND. The Corporators are :

THIRD. The place of business is to be located at            and its office for transaction of business shall be in            or at such other place as the Board of Directors may select.

FOURTH. The general nature of the business proposed to be transacted by this Corporation is :

FIFTH. The amount of capital stock of said Corporation shall be            dollars; of which            dollars has been subscribed by the Corporators aforesaid, and the residue thereof may be issued and disposed of as the Board of Directors may from time to time order and direct.

SIXTH. The capital stock shall be divided into            shares of the value of \$25 each.

SEVENTH. The affairs and business of the Corporation shall be conducted and controlled by a Board of Directors, consisting of            members, all of whom shall be stockholders of the Corporation. Said Board of Directors shall elect one of its members as President, and one of its members as Vice-President, and shall also elect a Secretary and Treasurer.

EIGHTH. The first election of Directors shall be held immediately after the organization of the Corporation, and said Directors shall serve for one year and until their successors are elected.

NINTH. The Board of Directors are empowered to ordain and establish all by-laws and regulations necessary to the management and business of said Corporation, and alter and repeal same at pleasure.

# FORMS AND PRECEDENTS.

TENTH. The first meeting of said Corporators for organization shall be held in at the office of at o'clock on the day of , 190 . The subscribers hereto hereby waive notice of said meeting.

In Testimony Whereof, we have hereunto set our hands on this, the day of , 190 .

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## CERTIFICATE.

Whereas, have associated themselves together as a body politic and corporate, to be known as

And Whereas, The said Corporators, being the subscribers to the capital stock of said Corporation, have waived the fifteen days' notice as required by law, and called a meeting for organization, to be held in at the office of at o'clock on the day of , 190 .

Whereas, At the time and place above set out, a meeting of the subscribers aforesaid was held to organize said Corporation and elect Directors; and

Whereas, At said meeting the following named persons were elected Directors, to wit: , and

Whereas, At a meeting of the said Board of Directors was elected President, and was elected Vice-President, and was elected Secretary, and was elected Treasurer.

Now, Therefore, the said as President, and the said as Directors, do, in pursuance of law, issue this, their Certificate, verified by their oaths, and do hereby certify as follows:

FIRST. Said Corporation is formed for the purpose of

SECOND. Its capital stock is dollars, divided into shares of \$25 each.

THIRD. dollars of said capital stock have been actually paid in by the subscribers hereto.

FOURTH. The names of the stockholders and the number of shares owned by them, respectively, are as follows:

Names.	No. of Shares.
_____	_____
_____	_____
_____	_____

In Testimony Whereof, the said , President of said Corporation, and , a majority of the Board of Directors of said Corporation, have hereunto set their hands on this day of , 190 .

, President.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Directors

Directors.

United States of America, }  
Indian Territory, } ss.  
District. }

on their oaths say that the matters and things in the foregoing certificate set out are true, to the best of their knowledge and belief.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me, this the day of , 190 .  
In Testimony Whereof, I have hereunto set my hand and seal of office.

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## IOWA.

### ARTICLES OF INCORPORATION

OF THE

COMPANY.

We, whose names are hereunto subscribed, have associated ourselves as a body corporate, under the provisions of Chapter 1, Title 1X. of the Code of Iowa, and acts amendatory thereto, and to that end have adopted the following articles of incorporation.

#### *Article I.*

The name of this corporation shall be:

#### *Article II.*

The principal place of business of this corporation shall be at the city of \_\_\_\_\_, in the county of \_\_\_\_\_, and State of Iowa.

(NOTE. If the corporation does not transact business in this State, it is not necessary that the articles name its principal place of business, or that such principal place of business be in this State.)

#### *Article III.*

The general nature of the business to be transacted by this corporation shall be:

(NOTE. It is customary to state the general nature of the business to be transacted quite fully, making this statement broad enough to cover all the contingencies that may possibly arise.)

#### *Article IV.*

This corporation shall have all of the powers necessary for, or incidental to, the convenient transaction of the business for which it has been organized, including the power to borrow money, and to issue its negotiable notes, bonds, or other evidences of such indebtedness, and to secure the repayment of the same by liens upon all or any portion of its property, real or personal, by way of mortgage or otherwise, and including the power to own, lease, buy, and sell real estate; and further among its powers shall be the following:

1. To have perpetual succession;
2. To sue and be sued by its corporate name;
3. To have a common seal, which it may alter at pleasure;
4. To render the interests of the stockholders transferable;
5. To exempt the private property of its members from liability for corporate debts;
6. To make contracts, acquire and transfer property, — possessing the same powers in such respects as natural persons;
7. To establish by-laws, and make all rules and regulations necessary for the management of its affairs.

(NOTE. This section is not absolutely necessary. It is, however, customary, and the provisions, especially with reference to borrowing money, etc., will be found in actual practice to facilitate such transactions.)

#### *Article V.*

The amount of the authorized capital stock of this corporation is the sum of \_\_\_\_\_ dollars divided into \_\_\_\_\_ shares, each of the par value \_\_\_\_\_ dollars. Not less than \_\_\_\_\_ dollars of the capital stock of this corporation shall be paid in in cash, or in property at its reasonable cash value, before the corporation transacts business except the business incident to its organization.

## FORMS AND PRECEDENTS.

(1) *The remainder of the capital stock of this corporation shall be issued and paid in from time to time as the board of directors may direct.*

(2) *The par value of all stock shall be paid in, either in cash or in property at its reasonable cash value, at the time that the stock is issued.*

(NOTE. The sentence indicated as (1) above, may be omitted if the stock is all to be paid in when the corporation commences business. If it is not all to be so paid in, there should be something of this character inserted, prescribing when the remainder of the stock shall be issued. The sentence (1) follows the method usually adopted in Iowa, but any method may be adopted which makes the articles state when the stock not issued when the corporation is organized shall be issued.)

(Sentence (2) above, should be omitted unless the stock is to be paid up as stated. If the stock is to be paid up entirely in cash when issued, or all of it in property when issued, modify this article to conform to the facts. It is not essential that this sentence be inserted, but if the stock is to be fully paid, it is desirable that the articles should show it.)

### Article VI.

This corporation shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_, and shall continue for the term of twenty years thereafter, *with the right of renewal as provided by law, unless sooner dissolved by a vote of not less than \_\_\_\_\_ of the stock then outstanding.*

(NOTE. Under the law it takes unanimous consent to dissolve before the expiration of the term unless the articles provide otherwise. It is therefore not unusual to put in a provision that a designated majority, as two-thirds or three-fourths, may dissolve the corporation. The italicized portion above is, however, not necessary, if such right is not desired.)

### Article VII.

The affairs of this corporation shall be conducted by a board of not less than \_\_\_\_\_ nor more than \_\_\_\_\_ directors.

Within said limits the number of directors may be fixed by the stockholders at any regular or special meeting; until otherwise fixed by the stockholders the board of directors shall consist of \_\_\_\_\_ members.

The board of directors shall have general charge of the business and affairs of this corporation, and all of the powers of this corporation are vested in its board of directors except as otherwise provided by law, or by the by-laws of this corporation, and subject to such action restricting said powers as may be taken from time to time by the stockholders, either at an annual or at a special meeting, duly called therefor.

The directors of this corporation may delegate their powers and may in writing authorize others to act for them, as their proxies, at any meeting or meetings of its board of directors; provided, however, that the stockholders of this corporation may at any time limit, restrict, or prohibit such delegation of power by its directors, and while so limited or restricted said power shall only be delegated pursuant to such limitations or restrictions; and if so prohibited it shall not be delegated during the continuance of such prohibition.

(NOTE. Much of the above is not necessary. It has, however, proved to be a matter of very great convenience. In lieu of the above the following article would fill the requirements of the law:

"The affairs of this corporation shall be conducted by a board of \_\_\_\_\_ directors who shall have general charge of its business.")

### Article VIII.

The officers of this corporation shall be a president, vice-president, secretary, and treasurer. The directors may appoint a cashier and executive committee and such other officers as the convenient transaction of its business may require.

All officers and directors of this corporation shall hold office for one year, or until their successors are chosen and qualified, and any vacancy in any office, or in the board of directors, may be filled by the remaining directors until the successor

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

of the person thus chosen to fill such vacancy is elected by the stockholders or directors, at an annual or special meeting, and has duly qualified.

### *Article IX.*

The board of directors of this corporation shall be elected at the annual meeting of the stockholders, which shall be held on the second Tuesday of \_\_\_\_\_ in each year, commencing with the year A.D. 19\_\_\_\_, at the principal office of the company at such hour as may be fixed by the directors or by the by-laws. The officers of this corporation shall be chosen by the directors at the annual meeting of the directors, which shall be held each year immediately after the annual meeting of the stockholders.

Until the annual meeting of the stockholders in the year A.D. 19\_\_\_\_, and until their successors are chosen and have qualified, \_\_\_\_\_ shall constitute the board of directors of this corporation, and its officers shall be \_\_\_\_\_ president, \_\_\_\_\_ vice-president, \_\_\_\_\_ secretary, and \_\_\_\_\_ treasurer.

(NOTE. Of course any date may be fixed for the annual meeting.)

### *Article X.*

Each director shall be a stockholder, and if any director shall cease to be a stockholder he shall forthwith by virtue of that fact cease to be a director. Two or more offices may be held by the same person at the same time.

(NOTE. The preceding article is not necessary to a legal organization.)

### *Article XI.*

At all meetings of the stockholders each stockholder shall be entitled to one vote for each share of stock held by him, which votes may be cast either in person or by proxy duly authorized in writing.

(NOTE. The preceding article is not necessary to a legal organization.)

### *Article XII.*

The highest amount of indebtedness to which this corporation shall at any time subject itself shall be an amount not in excess of two-thirds of its capital stock then issued and outstanding.

### *Article XIII.*

The private property of the stockholders of this corporation shall be exempt from corporate debts.

### *Article XIV.*

These articles may be amended at any annual meeting of the stockholders or at any special meeting called for that purpose; but no such amendment shall be made without the affirmative vote in its favor of \_\_\_\_\_ of the shares of stock then outstanding.

(NOTE. This article is probably unnecessary but it is better to have it, and it is required, if an amendment by a bare majority of a quorum is to be precluded.)

*In Witness Whereof*, we have hereunto subscribed our names on this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_.

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

Before me, \_\_\_\_\_, a notary public, in and for said county, personally appeared \_\_\_\_\_, said persons being to me personally known to be the identical persons whose names are subscribed in the foregoing articles of incorporation,

## FORMS AND PRECEDENTS.

and each for himself acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and notarial seal at \_\_\_\_\_, in the county of \_\_\_\_\_, and State of Iowa, the day and year last above written.  
\_\_\_\_\_, Notary Public in and for said county and State.

(NOTE. It is not necessary that the incorporators subscribe for any stock, and they need not become stockholders.)

## KANSAS.

### APPLICATION FOR CHARTER.

*To the Charter Board of the State of Kansas:* The undersigned hereby apply to the Charter Board of the State of Kansas, consisting of the Attorney-General, Secretary of State, and State Bank Commissioner, for permission to organize a private corporation under the law of the State of Kansas, and for that purpose make the following statement, to wit:

#### *First.*

The name of the proposed corporation shall be: \_\_\_\_\_.

#### *Second.*

The place where the principal office or place of business of said corporation is to be located is: \_\_\_\_\_.

#### *Third.*

The length of time for which said corporation is to exist shall be \_\_\_\_\_ years.

#### *Fourth.*

The full nature and character of the business in which said corporation proposes to engage is: \_\_\_\_\_.

#### *Fifth.*

The names and addresses of the proposed incorporators are:

#### *Sixth.*

The proposed amount of the capital of said corporation is \_\_\_\_\_ dollars, to be divided into \_\_\_\_\_ shares, of \_\_\_\_\_ dollars each.

We further state that the above application is made in good faith, with the intention that said corporation shall actually engage in the business specified, and none other.

*In Witness Whereof,* we, the above-named incorporators, have hereunto subscribed our names, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

State of Kansas, } ss.  
County of \_\_\_\_\_

Personally appeared before me, a \_\_\_\_\_, in and for said county and State, the above-named \_\_\_\_\_, who are personally known to me to be the same persons who executed the foregoing instrument in writing, and they each duly acknowledged the execution of the same.

*In Testimony Whereof,* I have hereunto subscribed my name and affixed my seal, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

(My commission expires \_\_\_\_\_, 190 .)



INCORPORATION AND ORGANIZATION OF CORPORATIONS.

CHARTER

OF

The undersigned, citizens of the State of Kansas, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation under the laws of the State of Kansas, and do hereby certify :

*First.*

That the name of this corporation shall be THE

*Second.*

That the purposes for which this corporation is formed are to :

*Third.*

That the place where its business is to be transacted at :

*Fourth.*

That the term for which this corporation is to exist is :

*Fifth.*

That the number of directors of this corporation shall be , and the names and residences of those who are appointed for the first year are :

*Sixth.*

That the estimated value of the goods, chattels, lands, rights, and credits owned by the corporation is dollars.

That the amount of the capital stock of this corporation shall be dollars, and shall be divided into shares, of dollars each.

*Seventh.*

That the names and residences of the stockholders of said corporation, and the number of shares held by each, are as follows, to wit:

Names.	Residences.	No. of Shares.
--------	-------------	----------------

*In Testimony Whereof*, we have hereunto subscribed our names, this day of , A. D. 190 .

State of Kansas, }  
County, } ss.

Personally appeared before me, a Notary Public in and for County, Kansas, the above-named who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

*In Testimony Whereof*, I have hereunto subscribed my name and affixed my notarial seal, this day of , A. D. 190 .  
(SEAL.)

, Notary Public.

(My commission expires .)

OFFICE OF TREASURER OF STATE.

Received of the sum of dollars, the same being the Charter Fee for the  
Dated this day of , A. D. 190 .

By , Treasurer of State of Kansas.

FORMS AND PRECEDENTS.

KENTUCKY.

ARTICLES OF INCORPORATION.

The corporators whose names are hereto signed have executed these articles of incorporation for the purpose of forming a corporation under the laws of the State of Kentucky, in accordance with the following provisions:

1. The name of the corporation shall be:
2. The place where the principal office of the corporation shall be is the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Kentucky.
3. The purposes for which this corporation is formed are:
4. The amount of the capital stock of this corporation shall be \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each. (If preferred stock is desired, insert provision therefor at this point.)
5. The names and residences of the stockholders and the number of shares subscribed for by each are as follows:
6. This corporation shall begin on \_\_\_\_\_, and the period of continuance shall be \_\_\_\_\_ years (or perpetual).
7. The affairs of the corporation are to be conducted by (state the officers to conduct the affairs of the corporation), who shall be elected annually at (name, time, and place).
8. The corporation shall not at any time incur a higher amount of indebtedness or liability than \_\_\_\_\_ dollars.
9. The private property of the stockholders shall not be subject to the corporate debts (or shall be subject, and state to what extent).

*In Witness Whereof*, we have hereunto subscribed our names this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 \_\_\_\_\_.

State of Kentucky, }  
County of \_\_\_\_\_ } ss.

I \_\_\_\_\_, a Notary Public in and for said county and State, do hereby certify that this instrument of writing from (here insert names of incorporators) was this day produced to me by the above parties, and was acknowledged by the said \_\_\_\_\_ to be their act and deed.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_,  
\_\_\_\_\_, Notary Public.

LOUISIANA.

CERTIFICATE OF INCORPORATION

OF THE

\_\_\_\_\_  
COMPANY.

State of Louisiana,  
Parish of \_\_\_\_\_,  
City of \_\_\_\_\_.

*Be It Known*, that on this \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand nine hundred and \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for the Parish of \_\_\_\_\_, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the persons whose names are hereunto subscribed, all above the full age of majority, who severally declared that, availing themselves of the provisions of the laws of this State relative to the organization of corporations, they have formed and organized, and by these presents do form themselves and of those whom they represent into and constitute a corporation and body politic in law for the objects

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

and purposes, and under the stipulations and agreements hereinafter set forth and expressed, which they hereby adopt as their charter. (If a limited corporation is to be formed, the above clause should read, from the words "availing themselves," as follows: Availing themselves of Act 36 of 1888 as well as the general laws of the State relative to the organization of corporations, they hereby form themselves into and constitute a corporation for the objects and purposes, and under the stipulations hereinafter set forth: )

### *Article I.*

The name and title of the corporation hereby formed is declared to be .  
Its domicile shall be in the City of , State of Louisiana, and it shall have and enjoy succession by its corporate name for a period of years from and after the date hereof.

This corporation shall have power and authority to contract, sue, and be sued in its corporate name; to make and use a corporate seal; to hold, receive, hire, and purchase real and personal property and to sell, mortgage, or pledge the same, and to borrow money and issue bonds, notes, and other obligations.

All citations or other legal process shall be served upon the President, and in the event of his absence or inability to act from any cause, the same shall be served upon the Vice-President or Secretary-Treasurer.

### *Article II.*

The objects and purposes for which this corporation is organized, and the nature of the business to be carried on by it are hereby declared to be:  
(Objects and purposes.)

### *Article III.*

The capital stock of this corporation is hereby fixed at the sum of dollars, divided into and represented by shares of the par value of dollars, which shall be paid for in at the time of subscription.

This corporation shall commence business as soon as dollars of its capital stock shall have been subscribed for.

### *Article IV.*

All the corporate powers of this corporation shall be vested in and exercised by a board of directors, to be composed of stockholders, of whom shall constitute a quorum for transacting all business. The Board of Directors shall be vested with full power and authority to make all contracts, purchases, and sales, and adopt all by-laws, rules, and regulations for the government of the business and affairs of the company, and alter, amend, and change the same at pleasure; appoint, hire, and discharge all officers, agents, and employees, fix all salaries, and generally do and perform all things necessary in the transaction of the business and affairs of the company. Any vacancy occurring in said board shall be filled by the stockholders in the manner as provided for in the election of directors.

The first Board of Directors of this corporation shall consist of (names), with the said as President, as Vice-President, and as Secretary-Treasurer, who shall hold their offices until the first (name day) in , 190 , or until their successors are duly elected and qualified.

On the first (name day) in , 190 , and annually thereafter, an election for directors shall be held at the office of the company, under the supervision of commissioners to be appointed by the President, and the directors then elected shall take their seats immediately and shall hold office until their successors are duly elected and qualified. Each board shall elect its own officers, which shall consist of a President, a Vice-President, and a Secretary-Treasurer.

All corporate elections shall be by ballot, and a majority of the votes cast shall

## FORMS AND PRECEDENTS.

elect, and each share of stock shall be entitled to one vote either in person or by proxy.

Written notice of elections shall be given to each stockholder by the Secretary-Treasurer at least \_\_\_\_\_ days prior to elections.

### Article V.

This act of incorporation may be changed, altered, or modified, or this corporation dissolved, with the assent of three-fourths of the stock present or represented at any general meeting of the stockholders convened for that purpose after thirty days' prior notice of such meeting shall have been given by publication in one of the daily newspapers published in the City of \_\_\_\_\_ by five publications during said period, and such changes as may be made in reference to the capital stock shall require in addition \_\_\_\_\_ days' notice in writing to each stockholder.

### Article VI.

Whenever this corporation is dissolved, either by limitation of its charter or from any cause, its affairs shall be liquidated by \_\_\_\_\_ commissioners to be appointed from among the stockholders at a meeting of the stockholders convened for that purpose after \_\_\_\_\_ days' prior notice shall have been given by the Secretary to each stockholder. Said commissioners shall remain in office until the affairs of said corporation shall have been fully liquidated. In case of the death of either commissioner, the survivor shall continue to act.

### Article VII.

No stockholder of this corporation shall ever be held liable or responsible for the contracts or faults thereof in any further sum than the unpaid balance due to the corporation on the shares owned by him, nor shall any mere formality in organization have the effect of rendering this charter null, nor of exposing a stockholder to any liability beyond the amount of his stock.

The subscribers hereto have each written opposite their names the number of shares subscribed for, so that this act may also serve as the original subscription list.

Thus done and passed in my notarial office in the City of \_\_\_\_\_ aforesaid, in the presence of \_\_\_\_\_ and \_\_\_\_\_, competent witnesses of lawful age and residing in this city, who hereunto subscribe their names, together with said parties and me, notary, on the day and date set forth in the caption hereof.

Original signed : \_\_\_\_\_

\_\_\_\_\_ and others.

Witnesses : \_\_\_\_\_

\_\_\_\_\_, Notary Public.

I, the undersigned, Recorder of Mortgages, in and for the Parish of \_\_\_\_\_, State of Louisiana, do hereby certify that the above and foregoing act of incorporation of the \_\_\_\_\_ Company was this day duly recorded in my office, in book \_\_\_\_\_, folio \_\_\_\_\_, City of \_\_\_\_\_, (date) \_\_\_\_\_

Signed :

(SEAL)

Recorder.

I hereby certify the foregoing and within to be a true and correct copy of the original act of incorporation of the \_\_\_\_\_ Company, together with the certificate of the Recorder of Mortgages on file and of record in my office.

In faith whereof I hereunto set my hand and seal this day of \_\_\_\_\_, A. D. 190 .

(SEAL)

\_\_\_\_\_, Notary Public.

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## MAINE.

### ARTICLES OF ASSOCIATION.

In accordance with the Revised Statutes of the State of Maine, Chapter 47, Sections 6, 7, 8, and 10, we, the undersigned, whose residences are set opposite our respective names, hereby associate ourselves together by these written Articles of Agreement for the purpose of forming a corporation under the laws of the State of Maine, the purposes of which said corporation are :

The first meeting of said associates shall be held in accordance with the provisions of Section 7 of Chapter 47, at the office of \_\_\_\_\_, No. \_\_\_\_\_

St., \_\_\_\_\_, Maine, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .  
Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

Names.

Residences.

_____	_____
_____	_____
_____	_____

### WAIVER OF NOTICE OF FIRST MEETING OF INCORPORATORS.

We, the undersigned, being all the signers of the foregoing Articles of Association, hereby waive notice of the time, place, and purpose of the first meeting of the signers of said Articles of Association as required by Section 7 of Chapter 47 of the Revised Statutes of the State of Maine, and acts additional thereto and amendatory thereof, and do hereby fix the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 , at \_\_\_\_\_ o'clock in the forenoon as the time, and the office of \_\_\_\_\_, No. \_\_\_\_\_

\_\_\_\_\_ Maine, as the place of said meeting, and we do hereby severally consent that said first meeting be held at the time, place, and for the purposes aforesaid, to wit :

1. To organize into a corporation.
2. To adopt a corporate name.
3. To define the purposes of the corporation.
4. To fix the amount of capital stock, and divide same into shares.
5. To elect a President, not less than three Directors, a Clerk, a Treasurer, and all other necessary officers.
6. To adopt a Code of By-Laws.
7. To act upon any further business which may properly come before the meeting.

Dated at \_\_\_\_\_, Maine, this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

_____
_____
_____

### FIRST MEETING.

Pursuant to the foregoing Articles of Association and Waiver of Notice of First Meeting of Incorporators, signed by all the incorporators, a meeting of said signers of said articles was held at the office of \_\_\_\_\_, No. \_\_\_\_\_ Street, \_\_\_\_\_, Maine, on the \_\_\_\_\_ day of \_\_\_\_\_ 190 , at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.

Of the signers the following were present :

The meeting was called to order by \_\_\_\_\_

\_\_\_\_\_ was chosen Chairman and presided, and \_\_\_\_\_

was

chosen Clerk.

The clerk was then duly sworn as appears by the following certificate :

# FORMS AND PRECEDENTS.

STATE OF MAINE.

PORTLAND,

190 .

Cumberland, ss.

Then personally appeared \_\_\_\_\_, Clerk of the Meeting of Associates, mentioned in the foregoing Articles of Agreement, and made oath that he would faithfully and impartially perform the duties of his office.

Before me,

, Justice of the Peace.

The original Articles of Association and Waiver of Notice of First Meeting of Incorporators were presented and ordered to be made a part of this record.

On motion it was *Voted*: To organize a corporation under Sections 6, 7, 8, and 10 of Chapter 47 of the Revised Statutes of Maine, and acts additional thereto and amendatory thereof.

On motion it was *Voted*: That the name of the corporation shall be:

On motion it was *Voted*: That the purposes of said corporation shall be as set forth, stated, specified, and defined in the Articles of Association, which are expressly referred to and made a part of this vote.

On motion it was *Voted*: That the place of business of this corporation shall be at \_\_\_\_\_, Maine, but the corporation may maintain other general offices and places of business at such other place or places, either within or without this State, as the Directors may from time to time determine to be for the interests of the corporation.

On motion it was *Voted*: That the capital stock of this corporation shall be and is hereby fixed at \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each.

On motion it was *Voted*: That the chairman appoint a Committee of one to examine and report at once the names and residences of persons who have subscribed for stock in this company, and the amount of stock subscribed for by each. The Clerk was appointed as such Committee, and made the following report of the list of stockholders, and the report was accepted, and the persons therein named were declared to be stockholders in this corporation.

## REPORT OF COMMITTEE.

Names.

Residences.

No. of Shares.

The following subscriptions for stock were then filed:

## SUBSCRIPTION FOR STOCK.

\_\_\_\_\_, MAINE, \_\_\_\_\_, 190 .

We, the undersigned, hereby severally agree, each with the other, and with the corporation hereinafter named, in consideration of the mutual agreements herein contained, to make, pay for, and receive the number of shares set opposite our respective names, of the capital stock of the \_\_\_\_\_ Company.

Names.

Residences.

No. of Shares.

On motion it was *Voted*: To have the following Code of

BY-LAWS: (Here insert same.)

On motion it was *Voted*: To proceed to the election of officers for the ensuing year by written ballot, and that the Clerk be a Committee to receive, sort, and count the votes thrown. Having attended to that duty, he reported that for directors, \_\_\_\_\_ received \_\_\_\_\_ votes, being all the votes thrown; that for Treasurer, \_\_\_\_\_ received \_\_\_\_\_ votes, being all the votes thrown; that for Clerk, \_\_\_\_\_ received \_\_\_\_\_ votes, being all the votes thrown;

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

that for Secretary, \_\_\_\_\_ received \_\_\_\_\_ votes, being all the votes thrown, and the report was accepted and the persons therein named were declared to be duly elected to the respective offices.

The Clerk was then duly sworn, as appears by the following Certificate :

### STATE OF MAINE.

PORTLAND, \_\_\_\_\_, 190 .

Cumberland, ss :

Then personally appeared the above-named \_\_\_\_\_, and being duly sworn, made oath that he would faithfully and impartially perform the duties of his said office.

Before me,

\_\_\_\_\_, *Justice of the Peace.*

On motion it was *Voted*: To proceed to the election of an Executive Committee of \_\_\_\_\_ members, and that the Clerk be a Committee to receive and sort and count the votes thrown. Having attended to that duty, he reported that for members of the Executive Committee \_\_\_\_\_ had received \_\_\_\_\_ votes, being all the votes thrown.

On motion it was *Voted*: To prepare a Certificate of Incorporation setting forth the name and purposes of the corporation and other particulars required by said Chapter 47, and the same was accordingly done.

On motion it was *Voted*: To adjourn.

Adjourned.

Attest :

\_\_\_\_\_, *Secretary.*  
\_\_\_\_\_, *Clerk of Meeting of Associates.*

### RATIFICATION OF RECORDS.

We, the undersigned, being all the members of said corporation, hereby acknowledge that the above are true records of the organization of the aforesaid corporation, and all the proceedings of the aforesaid meeting, and hereby consent to approve, ratify, and confirm all of the aforesaid proceedings and the above records thereof.

Dated \_\_\_\_\_, Maine, this \_\_\_\_\_ day of \_\_\_\_\_ 190 .

A true copy of the records of the proceedings of the first meeting.

Attest:

\_\_\_\_\_, *Clerk.*

### CERTIFICATE OF ORGANIZATION OF A CORPORATION UNDER THE GENERAL LAW.

The undersigned, officers of a corporation organized at \_\_\_\_\_, Maine, at a meeting of the signers of the articles therefor, duly called and held at the office of \_\_\_\_\_, in the City of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 , hereby certify as follows :

The name of said corporation is :

The purposes of said corporation are :

The amount of capital stock is \_\_\_\_\_ dollars.

The amount of capital stock already paid in is \_\_\_\_\_ .

The par value of the shares is \_\_\_\_\_ dollars.

The names and residences of the owners of said shares are as follows :

Names.	Residences.	No. of Shares.
_____	_____	_____
_____	_____	_____
_____	_____	_____

Unissued and in the Treasury.

\_\_\_\_\_  
Total.

## FORMS AND PRECEDENTS.

Said corporation is located at \_\_\_\_\_ in the County of \_\_\_\_\_ .  
 The number of directors is \_\_\_\_\_ , and their names are \_\_\_\_\_ .  
 The name of the Clerk is \_\_\_\_\_ , and his residence is \_\_\_\_\_ .  
 The undersigned \_\_\_\_\_ is President ; the undersigned \_\_\_\_\_ is  
 Treasurer ; and the undersigned \_\_\_\_\_ are a majority of the Directors  
 of said corporation.

*Witness* our hands this \_\_\_\_\_ day of \_\_\_\_\_ , A. D. 190 .  
 \_\_\_\_\_ , *President.*  
 \_\_\_\_\_ , *Treasurer.*  
 \_\_\_\_\_ , *Directors.*  
 \_\_\_\_\_ , 190 .

ss.  
 Then personally appeared \_\_\_\_\_ and severally made oath to the  
 foregoing certificate that the same is true.  
 Before me, \_\_\_\_\_ , *Justice of the Peace.*

### STATE OF MAINE.

Attorney General's Office, 190 .

I hereby certify that I have examined the foregoing certificate, and the same is properly drawn and signed, and is conformable to the Constitution and laws of the State.

\_\_\_\_\_, *Attorney General.*  
 Company.

ss.  
 Registry of Deeds.  
 190 .

Received \_\_\_\_\_  
 at \_\_\_\_\_ h. \_\_\_\_\_ m. \_\_\_\_\_ m.  
 Recorded in Vol. \_\_\_\_\_ Page \_\_\_\_\_ .  
 Attest : \_\_\_\_\_ , *Register.*  
 A true copy of record.  
 Attest : \_\_\_\_\_ , *Register.*

## MARYLAND.

### CERTIFICATE OF INCORPORATION.

*Know all Men by these Presents:* That we, \_\_\_\_\_ being citizens of the United States and a majority of whom are citizens of the State of Maryland, do hereby certify that we do under and by virtue of the General Laws of this State, authorizing the formation of corporations, hereby form a corporation under the name of \_\_\_\_\_ of \_\_\_\_\_ City.

2. *We do further Certify,* That the said corporation so formed is a corporation for \_\_\_\_\_ ; that the term of existence of said corporation is limited to \_\_\_\_\_ years ; and that the said corporation is formed upon the articles, conditions and provisions herein expressed, and subject in all particulars to the limitations relating to corporations which are contained in the General Laws of this State.

3. *We do further Certify,* That the operations of said corporation are to be carried on in \_\_\_\_\_ and that the principal office of said corporation will be located in \_\_\_\_\_ City.

4. *We do further Certify,* That the aggregate of the capital stock of the said corporation is \_\_\_\_\_ dollars, and that the said capital is divided into \_\_\_\_\_ shares, of the par value of \_\_\_\_\_ dollars each.

5. *We do further Certify,* That the said corporation will be managed by \_\_\_\_\_



# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

(Board of Directors), and that \_\_\_\_\_ are the names of the (Directors) who will manage the concerns of the said corporation for the first year.

*In Witness Whereof*, We have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, in the year nineteen hundred and \_\_\_\_\_.

WITNESS : \_\_\_\_\_ (SEAL.)  
 \_\_\_\_\_ (SEAL.)  
 \_\_\_\_\_ (SEAL.)  
 \_\_\_\_\_ (SEAL.)  
 \_\_\_\_\_ (SEAL.)

State of Maryland :  
 Baltimore City, to wit :

Before the subscriber, a Notary Public, of the State of Maryland, in and for the City of \_\_\_\_\_ personally appeared on this \_\_\_\_\_ day of \_\_\_\_\_, nineteen hundred and \_\_\_\_\_, and did severally acknowledge the foregoing certificate to be their act and deed.

*Witness* my hand and notarial seal.

I, \_\_\_\_\_, one of the Judges of the \_\_\_\_\_ do hereby certify that the foregoing certificate has been submitted to me for examination; and *I do further Certify*, That the said certificate is in conformity with the provisions of the law authorizing the formation of said corporation.

## MASSACHUSETTS.

We, whose names are hereto subscribed, do, by this agreement, associate ourselves with the intention of forming a corporation according to the provisions of Chapter 437 of the Acts of the year 1903, of the Commonwealth of Massachusetts, and the Acts in amendment thereof and in addition thereto.

The name by which this corporation shall be known is \_\_\_\_\_

The location of the principal office of the corporation within the Commonwealth is the \_\_\_\_\_ of \_\_\_\_\_, and outside the Commonwealth, the \_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_.

The purposes for which the corporation is formed and the nature of the business to be transacted by it are as follows:

The total amount of the capital stock to be authorized is \_\_\_\_\_ dollars. The par value of its shares is, preferred \_\_\_\_\_ dollars, common \_\_\_\_\_ dollars. The number of its shares is, preferred \_\_\_\_\_, common \_\_\_\_\_.

(State the restrictions, if any, imposed upon the transfer of stock, and if there are to be two or more classes of stock, a description of the different classes, and a statement of the terms on which they are to be created, and the method of voting thereon.)

(State any other provisions not inconsistent with law for the conduct and regulation of the business of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or any class of stockholders.)

The first meeting shall be called by \_\_\_\_\_ of \_\_\_\_\_ (or if notice is waived); and we hereby waive all requirements of the statutes of Massachusetts for notice of the first meeting for organization, and appoint the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M., at \_\_\_\_\_ as the time and place of holding said meeting.

The names and residences of the incorporators, and the amount of \_\_\_\_\_ stock subscribed for by each, are as follows :

Name.	Residence.	Amount subscribed for.
_____	_____	_____
_____	_____	_____
_____	_____	_____

In witness whereof, we have hereunto set our hands, this \_\_\_\_\_ day of \_\_\_\_\_, in the year nineteen hundred and \_\_\_\_\_.

# FORMS AND PRECEDENTS.

## NOTICE OF FIRST MEETING.

To

You are hereby notified, that the first meeting of the subscribers to an agreement, to associate themselves with the intention of forming a corporation to be known by the name of \_\_\_\_\_ dated \_\_\_\_\_, for the purpose of organizing said corporation by the adoption of by-laws, and election of officers, and the transaction of such other business as may properly come before the meeting, will be held on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M., at \_\_\_\_\_.

One of the subscribers to said agreement.  
\_\_\_\_\_, 190 .  
\_\_\_\_\_, 190 .

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

I certify that I have served the foregoing notice upon each of the subscribers by copy served as follows (state whether delivered in hand, or deposited in the post-office, postpaid, addressed to each at his place of business or residence, or left at his residence or usual place of business) seven days at least before the day fixed for the first meeting.

\_\_\_\_\_  
\_\_\_\_\_ 190 .

County of \_\_\_\_\_, ss.  
Subscribed and sworn to,  
Before me,

\_\_\_\_\_, *Justice of the Peace.*

We, \_\_\_\_\_, being a majority of the directors of the \_\_\_\_\_ Company, elected at its first meeting in compliance with the requirements of Section 11 of Chapter 437 of the Acts of 1903, do hereby certify that the following is a true copy of the agreement of association to form said corporation, with the names of the subscribers thereto:

We, whose names are hereto subscribed, do, by this agreement, associate ourselves with the intention of forming a corporation according to the provisions of Chapter 437 of the Acts of the year 1903 of the Commonwealth of Massachusetts, and the acts in amendment thereof and in addition thereto.

The name by which the corporation shall be known is \_\_\_\_\_

The location of the principal office of the corporation within the Commonwealth is the \_\_\_\_\_ of \_\_\_\_\_, and outside the Commonwealth the \_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_.

The purposes for which the corporation is formed and the nature of the business to be transacted by it are as follows:

The total amount of its capital stock to be authorized is \_\_\_\_\_ dollars. The par value of its shares is, preferred \_\_\_\_\_, common \_\_\_\_\_ dollars. The number of its shares is, preferred \_\_\_\_\_, common \_\_\_\_\_.

(State any other provisions set out in the original certificate.)

The first meeting shall be called by \_\_\_\_\_ of \_\_\_\_\_ (or if notice is waived), and we hereby waive all requirements of the statutes of Massachusetts for notice of the first meeting for organization, and appoint the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M., at \_\_\_\_\_ as the time and place of holding said first meeting.

The names and residences of the incorporators and the amount of stock subscribed for by each are as follows:

Name.	Residence.	Amount subscribed for.
-------	------------	------------------------

In Witness Whereof, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_ in the year nineteen hundred and \_\_\_\_\_.

That the first meeting of the subscribers to said agreement was held on the \_\_\_\_\_ day of \_\_\_\_\_ in the year nineteen hundred and \_\_\_\_\_.

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

That the amount of the capital stock now to be issued is \_\_\_\_\_ shares of preferred stock and \_\_\_\_\_ shares of common stock, to be paid for as follows:

## AMOUNT AND CLASS OF STOCK ISSUED.

	Shares Preferred.	Shares Common.
<b>In Cash:</b>		
In full . . . . .		
By instalments . . . . .		
Amount of instalment to be paid before commencing business . . . . .		
<b>In property:</b>		
<b>Real Estate:</b>		
Location . . . . .		
Area . . . . .		
<b>Personal Property:</b>		
Machinery . . . . .		
Merchandise . . . . .		
Bills Receivable . . . . .		
Stocks and Securities . . . . .		
Patent Rights . . . . .		
Trade marks . . . . .		
Copyrights . . . . .		
Goodwill . . . . .		
Services . . . . .		
Expenses . . . . .		

(State clearly the nature of such services or expenses and the amount of stock to be issued therefor.)

The name, residence, and post-office address of each of the officers are as follows:

Name of Office. Name. Residence. P. O. Address.

President,  
Treasurer,  
Clerk or Secretary,  
Directors,

*In Witness Whereof*, we have hereunto signed our names this \_\_\_\_\_ day of \_\_\_\_\_ in the year nineteen hundred and \_\_\_\_\_.

COMMONWEALTH OF MASSACHUSETTS.

County of \_\_\_\_\_, ss.

, 190 .

Then personally appeared the above-named \_\_\_\_\_, and severally made oath that the foregoing certificate by them subscribed is true to the best of their knowledge and belief.

Before me,

, Notary Public.

## MICHIGAN.

### ARTICLES OF ASSOCIATION

OF \_\_\_\_\_.

We, the undersigned, desiring to become incorporated under the provisions of Act 232 of the Public Acts of 1903, entitled "An Act to revise and consolidate the 552

## FORMS AND PRECEDENTS.

laws providing for the incorporation of manufacturing and mercantile companies or any union of the two, and for the incorporation of companies carrying on any other lawful business except such as are precluded from organization under this act by its express provisions, and to prescribe the powers and to fix the duties and liabilities of such corporations," and the acts amendatory thereof and supplementary thereto, do hereby make, execute, and adopt the following articles of association, to wit:

### *Article I.*

The name assumed by this association, and by which it shall be known in law, is .

### *Article II.*

The purpose or purposes of this corporation are as follows:

### *Article III.*

The principal place at which operations are to be conducted is at  
, in the County of , State of .

### *Article IV.*

The capital stock of the corporation hereby organized is the sum of dollars, of which dollars shall be common stock, and dollars shall be preferred stock. The preferred stock shall be subject to redemption at par on the day of , A. D. 190 , and the holder shall be entitled to a dividend of per cent per annum, payable , which shall be cumulative and payable before any dividend shall be set apart or paid on the common stock. The preferred stockholders shall be entitled to vote for directors.

### *Article V.*

The number of shares into which the capital stock is divided is of the  
per value of dollars each.

### *Article VI.*

The amount of common stock subscribed is dollars. The amount of preferred stock subscribed is dollars.

### *Article VII.*

The amount of common stock actually paid in is the sum of dollars, of which dollars has been paid in cash, and dollars has been paid in other property, an itemized description of which, with the value at which each item is taken, is as follows, viz.:

The amount of preferred stock actually paid in is the sum of dollars, of which dollars has been paid in cash, and dollars has been paid in other property, an itemized description of which, with the valuation at which each item is taken, is as follows, viz.:

### *Article VIII.*

The office in the State of Michigan for the transaction of business shall be kept at

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### Article IX.

The term of existence of this corporation is fixed at \_\_\_\_\_ years from the date hereof.

### Article X.

The names of the stockholders, their respective residences, and the number of shares of stock subscribed for by each are as follows :

Names.	Residence.	No. of Shares.
--------	------------	----------------

*In Witness Whereof*, we, the parties hereby associating, for the purpose of giving legal effect to these articles, hereunto sign our names, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

Names.	Names.
--------	--------

State of Michigan, }  
County of            } ss.

On the \_\_\_\_\_ day of \_\_\_\_\_, 190 , before me, personally appeared (names of incorporators) to me known to be the persons described in and who executed the foregoing instrument, acknowledged they executed the same as their free act and deed.

Notary Public,  
County, Michigan.

## MINNESOTA.

### ARTICLES OF INCORPORATION OF

---

#### Article I.

The name of this corporation shall be :

#### Article II.

The general nature of the business of this corporation shall be :  
The principal place of business of said corporation shall be :

#### Article III.

The time of commencement of said corporation shall be \_\_\_\_\_, and it shall continue for a period of \_\_\_\_\_ years.

#### Article IV.

The capital stock of said corporation shall be \_\_\_\_\_ dollars, divided into shares of \_\_\_\_\_ dollars each, and shall be paid in at such times and in such amounts as may be required by the Board of Directors.

#### Article V.

The highest amount of indebtedness or liability to which said corporation shall at any time be subject shall not exceed \_\_\_\_\_ dollars.

#### Article VI.

The names and places of residence of the persons forming said corporation are :

## FORMS AND PRECEDENTS.

### Article VII.

The government of said corporation and the management of its affairs shall be vested in a Board of Directors, composed of not less than \_\_\_\_\_ nor more than \_\_\_\_\_, all of whom shall be elected by and from the stockholders of said corporation, at the regular annual meeting thereof, which shall be held at the general office of the Company, in the City of \_\_\_\_\_, on the \_\_\_\_\_ of \_\_\_\_\_, and shall hold office for the term of one year and until their successors are elected and qualified. Until the first annual meeting of the stockholders the following named persons shall constitute the Board of Directors:

### Article VIII.

The officers of this corporation shall be a President, Vice-President, Secretary, Treasurer, and \_\_\_\_\_, all of whom shall be chosen by the Board of Directors for the term of one year, and any two of said offices, except those of President and Vice-President, may be held by the same person, and such Board of Directors shall have such other officers or agents as the interest of the corporation shall from time to time demand. Until the first annual meeting of the Board of Directors, and until their successors are elected and have qualified, \_\_\_\_\_ shall be President, and \_\_\_\_\_, Vice-President, \_\_\_\_\_, Secretary, and \_\_\_\_\_, Treasurer.

Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

In presence of \_\_\_\_\_

State of Minnesota, }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 190 , personally appeared before me \_\_\_\_\_, all to me known to be the parties who signed the foregoing instrument, and each for himself acknowledged that he signed the same as his free act and deed, for the uses and purposes therein expressed.

Notary Public,  
Co., Minn.

(SEAL.)

## MISSISSIPPI.

### THE CHARTER OF INCORPORATION OF \_\_\_\_\_.

*Section One.* Be it known, That \_\_\_\_\_ and their associates, successors, and assigns, are hereby created and constituted a body corporate, and as such shall have succession for a period of fifty years.

*Section Two.* The domicile of said corporation shall be at \_\_\_\_\_ Mississippi, but may be changed to any other point within Mississippi by a vote of the holders of a majority of the stock of said corporation.

*Section Three.* Said corporation is empowered and authorized to have and to hold, receive, purchase, and enjoy real estate and personal property, and the same, or any part thereof, to sell, rent, lease, convey, mortgage, or otherwise encumber; to issue notes, bonds, debentures or other evidences of debts; to sue and be sued, contract and be contracted with; to plead and be impleaded in the courts of the country; to use a common seal, and the same to change, alter, or renew at pleasure. And said corporation is further authorized and empowered to do all other acts necessary to promote its welfare which are not in conflict with the laws of the State of Mississippi or of the United States of America. And said corporation shall have and enjoy all the powers, privileges, and rights conferred upon corporations by Chapter 25 of the Annotated Code of 1892.

*Section Four.* The purposes for which the corporation is created are, and it is

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

hereby authorized and empowered to \_\_\_\_\_, and said corporation is further authorized to do all acts necessary and convenient in the judgment of the officers or directors of said corporation, for the welfare and business of said corporation; and said corporation shall have, possess, and enjoy all the rights, powers, and privileges enumerated in or created or conferred by Chapter 25 of the Annotated Code of 1892, which are necessary and proper for carrying out the purposes of this charter.

*Section Five.* The capital stock of said corporation shall be divided into shares of \_\_\_\_\_ each, but said capital stock may be increased or diminished at any time by a vote of the holders of a majority of the capital stock of said corporation.

*Section Six.* The management of the business of said corporation shall be confined to such a number of directors as may be fixed, and altered from time to time, by a vote of a majority of the stock issued by said corporation; said directors shall be stockholders of said corporation; the majority of said directors shall constitute a quorum for the transaction of business. The said directors shall elect from their number a President, and also elect a Vice-President, a Secretary, and a Treasurer, and may appoint or elect such other officers, agents, or employees as they may deem proper; shall hold office until their successors are duly elected and shall have qualified, and shall have power to fill all vacancies in their number caused by death, resignation, or otherwise.

*Section Seven.* The directors of said corporation shall have power and authority to make any and all needful rules, by-laws, and regulations for the control and management of the business affairs and property of said corporation, and may from time to time alter or renew the same as they may see fit.

*Section Eight.* At all stockholders' meetings a vote of the holders of a majority of the stock then present in person or by proxy shall decide all questions legally submitted at such meeting. Each stockholder shall be entitled to one vote for each share of stock held by him, it, or her, but all elections of directors or managers of said corporation shall be held in accordance with Section 194 of the Constitution of Mississippi and Section 837 of the Annotated Code of Mississippi.

*Section Nine.* No stockholder of any such corporation shall be in any way personally liable for the debts of said corporation beyond the amount of his, her, or its unpaid subscription to said stock.

*Section Ten.* All subscriptions to said capital stock shall be paid for in cash or property.

*Section Eleven.* Any two of said incorporators may open books of subscription to the capital stock of said corporation, and as soon as \_\_\_\_\_ shall have been subscribed, said corporation may organize, elect directors, and commence business.

*Witness* our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_  
State of \_\_\_\_\_ } ss.  
County of \_\_\_\_\_

Personally appeared before me \_\_\_\_\_ the within named  
\_\_\_\_\_, who acknowledged that they signed and delivered the  
foregoing instrument on the day and year therein mentioned.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 190 .

## MISSOURI.

### FORM FOR INCORPORATING MANUFACTURING AND BUSINESS CORPORATIONS.

*Know all Men by these Presents:* That we, the undersigned, desirous of forming a corporation under the laws of Missouri, and more particularly under the provisions of Article IX. Chapter 12, R. S. 1899, governing the formation of manufacturing and business companies, do hereby enter into the following agreement:

## FORMS AND PRECEDENTS.

*First.* That the name of the corporation shall be (Name designating the business contemplated; but not the name of any corporation existing under the laws of this State for similar purposes. When the name of a person or firm is assumed, it must be joined with some word designating the business to be carried on, followed by the word "company" or "corporation").

*Second.* That the corporation shall be located in the City of \_\_\_\_\_, County, Missouri.

*Third.* That the amount of the capital stock shall be \_\_\_\_\_ (not less than \$2,000 nor more than \$10,000,000) dollars, divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each (if preferred stock is desired, provision therefor should be inserted here); that the same has been *bona fide* subscribed and (not less than one-half) thereof actually paid up in lawful money of the United States, and is in the custody of the persons hereinafter named as the first Board of Directors.

*Fourth.* That the names (*not less than three*), places of residence of the shareholders, and the number of shares subscribed by each are:

Name.	Residence.	Number of Shares.
_____	_____	_____
_____	_____	_____
_____	_____	_____

*Fifth.* That the Board of Directors shall be composed of \_\_\_\_\_ shareholders (not less than three nor more than thirteen, at least three of whom shall be citizens and residents of Missouri); and the names of those agreed on for the first year are \_\_\_\_\_

*Sixth.* That the corporation shall continue for a term of \_\_\_\_\_ (not exceeding fifty) years.

*Seventh.* That the corporation is formed for the following purposes (see sec. 1319 of the Revised Statutes of Missouri):

*In Testimony Whereof*, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State of Missouri, }  
County of            } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 190 , before me personally appeared \_\_\_\_\_ (names of all the stockholders), to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

*In Testimony Whereof*, I have hereunto set my hand and affixed my notarial seal the day and year last above mentioned.

, Notary Public.

My commission expires \_\_\_\_\_, 190 .  
(SEAL.)

## MONTANA.

State of Montana, }  
County of            } ss.

We, \_\_\_\_\_, do by these presents, pursuant to and in conformity with Article I. of Chapter I., Title I., and Part IV. of the Civil Code of the State of Montana, associate ourselves together, and do hereby adopt the following Articles of Incorporation:

1. The corporate name of said company is hereby declared to be:
2. The objects for which the company is formed are as follows:



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

3. The names of the city, town, or locality, and county in which the operations of the said company are to be carried on are:

4. The said company shall commence on the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand nine hundred and \_\_\_\_\_, and shall continue in existence for the term of \_\_\_\_\_ years.

5. The number of trustees who shall manage the concerns of said company for the first three months, shall be \_\_\_\_\_, and their names and addresses are \_\_\_\_\_

6. The capital stock of the said company shall be \_\_\_\_\_ dollars, which shall be divided into \_\_\_\_\_ shares of \_\_\_\_\_ dollars each.

7. Amount actually subscribed is \_\_\_\_\_ dollars, subscribed by (here insert names and addresses of subscribers).

8. The stock is \_\_\_\_\_ assessable.

*Witness* Our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 190 .  
\_\_\_\_\_

State of Montana, } ss.  
County of \_\_\_\_\_

On this \_\_\_\_\_ day \_\_\_\_\_, A. D. 190 , before me \_\_\_\_\_, a \_\_\_\_\_ in and for said county and State, personally appeared \_\_\_\_\_, whose names are subscribed to the foregoing instrument as the parties thereto, known to me to be the same persons described in, and who executed the said foregoing instrument, and who each of them duly acknowledged to me that they each of them respectively executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.  
\_\_\_\_\_

## NEBRASKA.

### ARTICLES OF INCORPORATION OF THE

\_\_\_\_\_ COMPANY.

We, the undersigned, incorporators, do hereby, in pursuance of the Statutes of the State of Nebraska in such cases made and provided, associate ourselves as a body politic and corporate in the manner and for the purposes hereinafter mentioned.

#### *Art. I.*

The said corporation shall be named and known as \_\_\_\_\_ Company.

#### *Art. II.*

The principal place of transacting the business of the corporation shall be in the City of \_\_\_\_\_, \_\_\_\_\_ County, Nebraska.

#### *Art. III.*

The general nature of the business to be transacted by the corporation is:

#### *Art. IV.*

The authorized capital stock of the corporation shall be \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of \_\_\_\_\_ dollars each; which shall be fully paid up when issued, \_\_\_\_\_ of such shares shall be subscribed for and fully paid up upon the organization of the corporation, the remaining \_\_\_\_\_ shares, or any part thereof, may be issued at any time by the Board of Directors. The stockholders of the company shall be entitled to a *pro rata* distribution of all subsequent issues of stock, in such manner and under such rules and regulations as may be prescribed by the Board of Directors. Said stock may be paid for in cash, or its equivalent in property necessary and useful to the corporation in the transaction of its business.

## FORMS AND PRECEDENTS.

### *Art. V.*

The highest amount of indebtedness or liability to which the corporation may at any time subject itself shall not exceed an amount equal to \_\_\_\_\_ per cent of the capital stock issued.

### *Art. VI.*

The corporation shall date from and commence on the \_\_\_\_\_ day of \_\_\_\_\_, 190 , and it shall terminate on the \_\_\_\_\_ day of \_\_\_\_\_, 190 .

### *Art. VII.*

The affairs and business of the corporation shall be conducted by a Board of Directors, and by the officers by them to be elected, as hereinafter provided.

### *Art. VIII.*

The first meeting of the stockholders shall be held on the date of the commencement of the corporation, or as soon thereafter as practicable, and thereafter their regular annual meeting shall be held in the City of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_. At said first meeting, and at the annual meetings thereafter, the Board of Directors shall be elected by the stockholders from their own number, to hold office until the annual meeting next after their election and until their successors are elected and qualified.

### *Art. IX.*

The Directors shall in each instance, as soon as convenient after their election, elect from their own number a President, Vice-President, Secretary, and Treasurer, who shall hold office until the annual meeting next after their election and until their successors are elected and qualified. Any two of said offices may be held by one and the same person, except the offices of President and Vice-President.

### *Art. X.*

The Board of Directors shall have full power and authority to make all rules and by-laws for the proper government and control of all the business affairs of the corporation, and they may alter and amend the same at pleasure.

### *Art. XI.*

Vacancies occurring in the Board of Directors shall be filled by the stockholders, and other offices vacant from whatever cause shall be filled by the Board of Directors.

### *Art. XII.*

These articles of incorporation may be amended at any time. Every amendment shall be first approved by a two-thirds vote of the entire Board of Directors, and upon being so approved, it shall be entered at large upon the records of the Board. A draft of the proposed amendment or amendments, as the case may be, shall then be submitted to each stockholder, with the notice of the meeting called for the purpose of voting upon the same, which notice shall be given ten days at least prior to the date fixed for the meeting. If such amendment or amendments, or either of them, shall then be approved by the holder or holders of two-thirds of the capital stock of the corporation, each and every amendment so approved shall be considered adopted and be made a part of the Articles of Incorporation, and the Board of Directors shall thereafter subscribe, acknowledge, record, and publish the same, as by law required.

*In Testimony Whereof*, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_

In presence of :  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

State of Nebraska, } ss.  
County of }

On this            day of            personally before me (name of officer and title of office held) in and for            County, Nebraska, duly commissioned and qualified came            , to me well known to be the identical persons whose names are affixed to the foregoing articles of incorporation, and they severally acknowledged the execution of the same to be their voluntary act and deed for the purposes in said articles expressed. In testimony whereof I have hereunto subscribed my hand and affixed my official seal the day and date last above written.

Notary Public,  
County,  
Nebraska.

## NEVADA.

### ARTICLES OF INCORPORATION

OF

COMPANY.

*Know all Men by these Presents:* That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Nevada; and we hereby certify:

*First.* The name of this corporation is

*Second.* The location of the principal office of this corporation in the State of Nevada is in the            Building, Number            Street, in the City of            , County of            , and State of Nevada.

*Third.* The objects for which this corporation is formed are:

*Fourth.* The total authorized capital stock of this corporation shall be            dollars (not less than \$2,000), divided into            shares of the par value of            dollars per share. The amount of subscribed capital stock with which it will commence business is            dollars (not less than \$1,000). The amount actually subscribed is            dollars, and the amount actually paid up is            dollars. (At this point should be stated a description of different classes of stock, terms of their creation, and amount of each class subscribed, and the amount paid thereon; or if a non-stock corporation, state the terms and condition of membership.)

*Fifth.* The names and post-office addresses and residences of each of the original subscribers to the capital stock, and the amount subscribed by each are as follows:

Names (not less than three).	P. O. Address and Residence.	No. of Shares.
Amount subscribed.		

*Sixth.* The period of existence of this corporation is unlimited.

*Seventh.* The members of the Governing Board of this corporation shall be            styled directors, and shall be            in number.

*Eighth.* The resident agent of this corporation who shall be in charge of said company in the State of Nevada shall be            , a resident of            , County, Nevada, whose office is at No.            Street, in said City of            .

*Ninth.* The capital stock of this corporation after the amount of the subscribed price or par value has been paid in, or it has been issued as fully paid up, shall not be subject to assessment to pay debts of the corporation.

*Tenth.* (Here may be added such regulations and details as may be desired for regulating the business, officers, etc.)

*In Witness Whereof,* we have hereunto set our hands this            day of            , A. D. 19            .

(Signatures.)

Witnesses:

## FORMS AND PRECEDENTS.

State of                    }  
County of                } ss.

Be it remembered that on this           day of           , A. D. 190   , personally appeared before me, a           in and for said County and State,           , known to me to be the persons described in, and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

### NEW HAMPSHIRE.

#### ARTICLES OF AGREEMENT.

The undersigned, being persons of lawful age, hereby associate under the provisions of Chapter 147 of the Public Statutes of New Hampshire, by the following articles of agreement:

*Article 1.* The name of this corporation shall be:

*Article 2.* The object for which this corporation is established is:

*Article 3.* The place in which the business of this corporation is to be carried on is:

*Article 4.* The amount of the capital stock is to be           dollars, and shall be divided into           shares of the par value of \$           each.

*Article 5.* The first meeting of the corporation shall be held at           , on the           day of           at the hour of           M. Further notice of the time and place of said meeting is hereby waived.

*Article 6.* If desired, a statement may be inserted as to what officers of the corporation are to be provided for in the by-laws.

Names (at least five).

Post-Office Addresses.

(Incorporators)

### NEW JERSEY.

#### CERTIFICATE OF INCORPORATION

OF THE

We, the undersigned, in order to form a corporation for the purposes herein-after set forth, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

##### *Article I.*

The name of the corporation is:

##### *Article II.*

The principal and registered office of the Company is in the           Building,           , New Jersey, and the name of the agent therein and in charge thereof, and upon whom process against this corporation may be served, is

##### *Article III.*

The objects for which and for each of which the corporation is formed are:

It is the intention that the objects, purposes, and powers specified in the clauses contained in this third paragraph shall, except where otherwise expressed in said

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes, and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes, and powers.

### *Article IV.*

The following provisions for the regulation of the business and the conduct of the affairs of the Company are hereby established :

The corporation may use and apply its surplus earnings or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock from time to time, to such extent and in such manner and upon such terms as its Board of Directors shall determine ; and neither the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payment of dividends, unless otherwise determined by a majority of the Board of Directors or a majority of the stockholders.

The corporation in its by-laws may prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number.

The Board of Directors shall have power, without the assent or vote of the stockholders, to make, alter, rescind, or amend the by-laws of the corporation, to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation ; and from time to time to sell, assign, transfer, or otherwise dispose of any or all of the property of the corporation, but no such sale of all the property shall be made except pursuant to the vote of at least two-thirds of the Board of Directors.

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders ; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the Board of Directors, or by a resolution of the stockholders.

The Board of Directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of the State of New Jersey at such places as may be from time to time designated by them.

### *Article V.*

The Company shall be authorized to issue capital stock to the amount of dollars. The number of shares of which the capital stock shall consist is shares of the par value of dollars each. (If preferred stock is desired, insert provisions therefor at this point.)

### *Article VI.*

The names and post-office addresses of the incorporators, and the number of shares of stock for which severally and respectively we do hereby subscribe, the aggregate of our said subscriptions being dollars, is the amount of capital stock with which the Company will begin business, are as follows :

Names.	Post-Office Addresses.	No. of Shares.
--------	------------------------	----------------

### *Article VII.*

The duration of the Company shall be perpetual.

*In Witness Whereof*, we have hereunto set our hands and seals this            day  
of            190 .

(L. S.)  
(L. S.)  
(L. S.)

## FORMS AND PRECEDENTS.

State of                    }  
County of                } ss.

*Be It Remembered*, that on this        day of        , 190    , before me, a Notary Public in and for said County, personally appeared        , who I am satisfied are the persons named in, and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed.

, *Notary Public.*

(For use when acknowledgment is taken out of the State.)

State of                    }  
County of                } ss

I,        Clerk of the County of        and also Clerk of the Supreme Court for the said County, the same being a Court of record, *Do Hereby Certify* that        , whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of the taking of such proof of acknowledgment a Notary Public, in and for said County, duly commissioned and sworn and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for lands, tenements, or hereditaments, in said State of        . And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof of acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County the        day of        , 190    .

, *Clerk.*

## NEW MEXICO.

### CERTIFICATE OF INCORPORATION

OF THE

COMPANY.

We, the undersigned, for ourselves, our associates and successors, have associated ourselves together for the purpose of forming a corporation under the laws of the Territory of New Mexico, United States of America, and we hereby certify and declare as follows, to wit:

I. The name of the corporation is:

II. The principal and registered office of the Company is at No.        Street, in the city (or town) of        in the Territory of New Mexico, and the name of the agent therein and in charge thereof, and upon whom process against this corporation may be served, is:

III. The objects for which and for each of which the corporation is formed are:

V. The following provisions for the regulation of the business and the conduct of the affairs of the company are hereby established:

VI. The company shall be authorized to issue capital stock to the amount of        dollars (not less than \$3,000). The number of shares of which the capital stock shall consist is        shares, of the par value of        each. The amount of capital stock with which the company shall commence business shall be        dollars (not less than \$2000). (If preferred stock is desired, insert the provisions therefor in this article.)

VII. The number of directors who shall manage the concerns of the company for the first three months are        , all of whom are citizens of the United States, and one of whom is a resident of New Mexico. The names and addresses of said first Board of Directors are as follows:

Names.

Addresses.

VIII. The duration of the corporation shall be fifty years.

IX. The names and post-office addresses of the incorporators and the number of shares of stock for which severally and respectively we do hereby subscribe, the

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

aggregate of our said subscriptions being                      dollars, and is the amount of capital stock with which the Company will begin business, are as follows :

Names.                      Post Office Addresses.                      No. of Shares.

*In Witness Whereof*, we have hereunto set our hands and seals this day of                      , 190 .

(L. s.)  
(L. s.)  
(L. s.)

State of                      }  
County of                      } ss.

I certify that on this                      day of                      , 190 , before me personally came                      , to me personally known, and known to me to be the same persons described in and who executed the foregoing instrument, and severally duly acknowledged to me that they had signed and executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal at said county the day and year last above written.

, *Notary Public*,  
County.

### TERRITORY OF NEW MEXICO.

Office of the Secretary.

#### CERTIFICATE.

I,                      , Secretary of the Territory of this office, do hereby certify there was filed for record in this office, at                      o'clock, M., on the                      day of                      , A.D. 190 ,

#### ARTICLE OF INCORPORATION

##### OF THE

\_\_\_\_\_  
COMPANY,

and also, that I have compared the foregoing copy of the same with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal this                      day of                      , 190 .

, *Secretary of New Mexico*.

## NEW YORK

### CERTIFICATE OF INCORPORATION

#### OF THE

We, the undersigned, all natural persons of full age, two-thirds being citizens of the United States and one-third residents of the State of New York, desiring to form a stock corporation, pursuant to the provisions of the Business Corporation Law of the State of New York, do hereby make, sign, acknowledge, and file this certificate for that purpose as follows :

*First.* The name of the proposed corporation is :

*Second.* The purposes for which this corporation is formed are :

*Third.* The amount of the capital stock is                      dollars. The amount of capital with which the Company will begin business is                      dollars.

*Fourth.* The number of shares of which the capital stock shall consist is                      shares of the par value of                      dollars per share. (If preferred stock is to be issued, provision therefor should be made at this point.)

*Fifth.* The principal office of the corporation is to be located in :

*Sixth.* The duration of the Company will be perpetual.

*Seventh.* The number of its directors shall be :

# FORMS AND PRECEDENTS.

*Eighth.* The names and post-office addresses of the directors for the first year are:

Names.	Post-Office Addresses.
_____	_____

*Ninth.* The names and post-office addresses of the subscribers and the number of shares which each agrees to take in the corporation are as follows:

Names.	No. of Shares.	Addresses.
_____	_____	_____

*Tenth.* (Here insert provisions for the regulation of internal affairs if desired.)

*In Testimony Whereof*, the subscribers have made, signed, acknowledged, and filed this certificate.

Dated,

State of \_\_\_\_\_ } ss.  
County of \_\_\_\_\_

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, before me personally came \_\_\_\_\_, to me personally known, and known to me to be the persons described in and who executed the foregoing instrument, and severally duly acknowledged to me that they executed the same.

\_\_\_\_\_, *Notary Public.*

(For use out of the State.)

State of \_\_\_\_\_ } ss.  
County of \_\_\_\_\_

I, \_\_\_\_\_, Clerk of the County of \_\_\_\_\_, and also Clerk of the Court for the said County, the same being a Court of Record, *Do Hereby Certify*, that \_\_\_\_\_, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of the taking of such proof of acknowledgment, a Notary Public in and for the County of \_\_\_\_\_, dwelling in the said county, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof of acknowledgment is genuine.

*In Testimony Whereof*, I have hereunto set my hand and affixed the seal of the said Court and County, the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.

\_\_\_\_\_, *Clerk.*

## NORTH CAROLINA.

### CERTIFICATE OF INCORPORATION

OF THE

\_\_\_\_\_  
COMPANY.

This is to certify that we \_\_\_\_\_ do hereby associate ourselves into a corporation, under and by virtue of an act of the Legislature of the State of North Carolina (session 1901) entitled "An Act to Revise the Corporation Laws of North Carolina," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

*First.* The name of the corporation is \_\_\_\_\_ Company.

*Second.* The location of the principal office in this State is at No. \_\_\_\_\_ Street, in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_.

*Third.* The objects for which this corporation is formed are to:

*Fourth.* The total authorized capital stock of this corporation is \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of par value of \_\_\_\_\_ dollars each.

*Fifth.* The names and post-office addresses of the incorporators and the number



# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

of shares subscribed for by each, the aggregate of which, \$ , is the amount of capital stock with which this company will commence business, are as follows:

Name. Post-Office Address. No. of Shares.

*Sixth.* The period of existence of this corporation is limited to years.

*Seventh.* (Here insert any provisions for the regulation of internal affairs of the corporation that may be desired.)

*In Witness Whereof*, we have hereunto set our hands and seals the day of , 190 .

(SEAL.)  
(SEAL.)

Signed, sealed, and delivered in the presence of

State of  
County of

This is to certify that this day before me, a , personally appeared , who I am satisfied are the persons named in and who executed the foregoing certificate of incorporation, and I having first made known to them the contents thereof, they did each acknowledge that they did sign, seal, and deliver the same as their voluntary act and deed, for the uses and purposes therein expressed.

*In Testimony Whereof*, I have hereunto set my hand and affixed my official seal, this day of , A. D. 190 .

## NORTH DAKOTA.

### ARTICLES OF INCORPORATION

OF THE

COMPANY.

*Know all Men by these Presents:* That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of North Dakota. And we hereby certify:

*First.* The name of the said corporation is the

*Second.* The purpose for which it is formed is to carry on the business of in the County of and State of North Dakota.

*Third.* That the place where its principal business is to be transacted shall be the of , County of , and State of North Dakota. But it may have a business office without this State at the City of , State of , and any meetings of incorporators, stockholders, or directors may be held at either of said offices.

*Fourth.* That the term for which it is to exist is years from and after the date of its incorporation.

*Fifth.* That the number of its directors shall be , and that the names and residences of those who are appointed to serve until their successors are elected and qualified are:

Names.

Residences.

*Sixth.* That the amount of the capital stock of this corporation shall be dollars, divided into shares of the par value of dollars each.

*Seventh.* That the amount of said capital stock which has been actually subscribed is dollars, and the following are the names of the persons by whom the same has been subscribed and number of shares held by each:

Names of Subscribers. No. of Shares. Amount.

*In Witness Whereof*, we have hereunto set our hands and seals this day of , one thousand nine hundred and

(Signatures and seals.)

Signed and sealed in the presence of

566

FORMS AND PRECEDENTS.

State of North Dakota, }  
County of }

On this       day of       , in the year one thousand nine hundred and       , before me, a Notary Public in and for said county, personally appeared,       known to me to be the persons who are described in, and who executed the within instrument, and they each duly acknowledged to me that they executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year last above written.  
(SEAL.)

\_\_\_\_\_, Notary Public,  
Co.

OHIO.

ARTICLES OF COMPANY FOR PROFIT.

These articles of incorporation of the       Company witnesseth: That we, the undersigned, all (or a majority) of whom are citizens of the State of Ohio, desiring to form a corporation for profit, under the general corporation laws of said State, do hereby certify:

*First.* The name of said corporation shall be:

*Second.* Said corporation is to be located at       in       County, Ohio, and its principal business there transacted.

*Third.* Said corporation is formed for the purpose of:

*Fourth.* The capital stock of said corporation shall be       dollars, divided into       shares of       dollars each. (If preferred stock is to be issued, provision therefor should be inserted at this point.)

*In Witness Whereof*, we have hereunto set our hands this       day of       , A. D. 190 .

(Signatures.)

State of Ohio, }  
County of } ss.

Personally appeared before me the undersigned, a       in and for said county, this       day of       , A. D. 190 , the above named       , and each severally acknowledged the signing of the foregoing articles of incorporation to be his free act and deed for the uses and purposes therein mentioned.

*Witness*, my hand and official seal on the day and year last aforesaid.  
(SEAL.) (Signatures and title.)

State of Ohio, }  
County of } ss.

I,       , Clerk of the Court of Common Pleas within and for the county aforesaid, do hereby certify that       , whose name is subscribed to the foregoing acknowledgment as a       , was at the date thereof a       in and for said county, duly commissioned and qualified, and authorized as such to take said acknowledgment; and further, that I am well acquainted with his handwriting, and believe that the signature to said acknowledgment is genuine.

*In Witness Whereof*, I have hereunto set my hand and affixed the seal of said Court at       this       day of       , A. D. 190 .  
(SEAL.)

INCORPORATION AND ORGANIZATION OF CORPORATIONS.

OKLAHOMA.

ARTICLES OF INCORPORATION.

*Be It Known*, That the undersigned, citizens of the Territory of Oklahoma, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation, under the laws of the Territory of Oklahoma, and do hereby certify :

*First.*

That the name of this corporation shall be

*Second.*

That the purpose for which this corporation is (are) formed is (are) to :

*Third.*

That the place(s) where its principal business is to be transacted is (are) at :

*Fourth.*

That the term for which this corporation is to exist is :

*Fifth.*

The number of directors or trustees of this corporation, and the names and residences of such of them who are to serve until the election of such officers and their qualification :

Names.

Post-Office Addresses.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Sixth.*

That the estimated value of the goods, chattels, lands, rights, and credits owned by the corporation is \_\_\_\_\_ dollars.

That the amount of the capital stock of this corporation shall be \_\_\_\_\_ dollars, and shall be divided into \_\_\_\_\_ shares of \_\_\_\_\_ dollars each.

*In Testimony Whereof*, we have hereunto subscribed our names this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

Territory of Oklahoma, }  
County } ss.

Personally appeared before me, a Notary Public in and for said County, Territory above named, \_\_\_\_\_, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

*In Testimony Whereof*, I have hereunto subscribed my name, and affixed my Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

, Notary Public.

**OREGON.**

**PENNSYLVANIA.**

INCORPORATION AND ORGANIZATION OF CORPORATIONS.

PENNSYLVANIA.

TO THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA:

Sir,—In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled “An Act to provide for the incorporation and regulation of certain corporations,” approved the 29th day of April, A. D. 1874, and the several supplements thereto, the undersigned, of whom are citizens of Pennsylvania, having associated themselves together for the purpose hereinafter specified, and desiring that they may be incorporated, and that letters patent may issue to them and their successors according to law, do hereby certify:

1. The name of the proposed corporation is:
2. Said corporation is formed for the purpose of:
3. The business of said corporation is to be transacted in:
4. Said corporation is to exist for the term of \_\_\_\_\_ years.
5. The names and residences of the subscribers and the number of shares subscribed by each are as follows:—

Name.	Residence.	No. of Shares.
-------	------------	----------------

6. The number of directors of said corporation is fixed at \_\_\_\_\_, and the names and residences of the directors who are chosen directors for the first year are as follows:

Name.	Residence.
-------	------------

7. The amount of the capital stock of said corporation is \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars, and \_\_\_\_\_ dollars, being ten per centum of the capital stock, has been paid in cash to the Treasurer of said corporation, whose name and residence is:

(Signatures of Incorporators.)

State of Pennsylvania, }  
County of                    } ss.

Before me \_\_\_\_\_, in and for the county aforesaid, personally came the above named \_\_\_\_\_, who, in due form of law, acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .  
(SEAL.)

State of Pennsylvania, }  
County of                    } ss.

Personally appeared before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 , who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sworn and subscribed before me, the day and year aforesaid.

\_\_\_\_\_  
\_\_\_\_\_

RHODE ISLAND.

ARTICLES OF ASSOCIATION.

KNOW ALL MEN BY THESE PRESENTS: That we, \_\_\_\_\_ all of lawful age, hereby agree to and with each other:

1. To associate ourselves together for the purpose of constituting a corporation

## FORMS AND PRECEDENTS.

under and by virtue of the powers conferred by Chapter 176 of the General Laws of the State of Rhode Island.

2. Said corporation shall be known by the name of:
3. Said corporation is constituted for the purpose of engaging in business of:
4. Said corporation shall be located in:
5. The capital stock of said corporation shall be common stock in the amount of \_\_\_\_\_ dollars, to be divided into shares of the par value of \_\_\_\_\_ dollars, and preferred stock in the amount of \_\_\_\_\_ thousand dollars, to be divided into shares of the par value of \_\_\_\_\_ dollars each. (The advantages of the preferred stock over the common, if any, must be set forth.)

In Testimony Whereof, we have hereunto set our hands and stated our residences this                      day of                      , A. D. 190 .

(Signatures and addresses.)

**State of Rhode Island, County of \_\_\_\_\_, ss.**

In the \_\_\_\_\_ of \_\_\_\_\_ in said County this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 190 \_\_\_\_\_, then personally appeared before me \_\_\_\_\_, each and all known to me and known by me to be the parties executing the foregoing instrument, and that they acknowledged the said instrument to be their free act and deed.

\_\_\_\_\_, Notary Public.

**SOUTH CAROLINA.**

## DECLARATION AND PETITION FOR CHARTER.

State of South Carolina, } ss.  
County of }

**To the Secretary of State of South Carolina:**

The undersigned petitioners (insert names and residences), by this their declaration would respectfully show :

- 1st. That their names and residences are as above given.
- 2nd. The name of the proposed corporation which they desire to form is: .
- 3rd. The place at which it proposes to have its principal place of business, or to be located, is: .
- 4th. The general nature of the business which it proposes to do is:
- 5th. The amount of the capital stock to be                      dollars payable:
- 6th. The number of shares into which the capital stock is to be divided is of the par value of                      dollars each.
- 7th. (Any other matters which may be advisable to set forth.)

Wherefore your petitioners pray that the Secretary of State do issue to them a commission authorizing them to open books of subscription to the capital stock of the proposed corporation, after \_\_\_\_\_ days' public notice in the \_\_\_\_\_, a newspaper published in the county of \_\_\_\_\_.

And your petitioners will ever pray, etc.

(Signatures.)

**Date.**

## RETURN OF CORPORATORS. (SOUTH CAROLINA.)

State of South Carolina, } ss.  
County of }

**To the Secretary of State of South Carolina:**

Whereas, \_\_\_\_\_ did on \_\_\_\_\_ file in the office of Secretary of State of South Carolina a written declaration, signed by themselves, setting forth:

- 1st. The names and residences of the petitioners to be, as above given,  
2nd. The name of the proposed corporation to be with principal

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

place of business at \_\_\_\_\_, and the nature of the business it proposes to do.

3rd. The amount of the capital stock to be \_\_\_\_\_ dollars and the number of shares into which the same is to be divided to be \_\_\_\_\_, of the par value of \_\_\_\_\_ dollars each; and

*Whereas*, the above named petitioners were appointed by you a Board of Corporators, the undersigned, being a majority thereof, respectfully certify:

1st. That all the requirements of an Act entitled "An Act to provide for the formation of certain corporations and to define the powers thereof" approved the 9th day of March, A. D. 1896, and all amendments thereto, have been duly and fully complied with, fifty per cent of the aggregate amount of the capital stock having been subscribed by *bona fide* subscribers.

2nd. That, pursuant to notice published as required, a meeting was held on \_\_\_\_\_, at which a majority of all stock in value, being present, in person or by proxy, the following were elected Directors:

3rd. That subsequently there was elected as President, \_\_\_\_\_; as Vice-President, \_\_\_\_\_; as Secretary and Treasurer \_\_\_\_\_.

4th. That over twenty per cent of the aggregate capital stock has been paid to said Treasurer.

*Wherefore*, your petitioners pray that a charter be issued in the name and for the purposes indicated in their written declaration.

(Signatures.)

## SOUTH DAKOTA.

### ARTICLES OF INCORPORATION

OF  
\_\_\_\_\_.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, \_\_\_\_\_, for ourselves, our associates and successors, have associated ourselves together for the purpose of forming a corporation under and by virtue of the statutes and laws of the State of South Dakota, and we do hereby certify and declare as follows, viz.

#### *First.*

The name of the corporation shall be \_\_\_\_\_

#### *Second.*

The purposes for which this corporation is formed \_\_\_\_\_

#### *Third.*

The place where the principal business of this corporation shall be transacted is in the City of \_\_\_\_\_, South Dakota; but it may have a business office without this State, at the City of \_\_\_\_\_, State of \_\_\_\_\_, and any meetings of incorporators, stockholders, or directors of this company may be held at either of said offices or places of business; and the books of this corporation may be kept at either of said offices or places of business; and any incorporator or stockholder of said company entitled to be present and to vote at said meeting may be represented by proxy.

The domiciliary office of this corporation shall be at the office of \_\_\_\_\_ in the aforesaid City of \_\_\_\_\_, South Dakota.

#### *Fourth.*

The term for which this corporation shall exist shall be twenty (20) years, with such right of renewal for other and similar periods as may now or hereafter be permitted under the laws of South Dakota.

## FORMS AND PRECEDENTS.

### Fifth.

The number of Directors of this corporation shall be \_\_\_\_\_, and each Director shall hold at least one share of stock. The names and residences of the Directors who are to serve until their successors are elected are as follows :

Names.	Residences.

### Sixth.

The amount of capital stock of this corporation shall be and is \_\_\_\_\_ dollars (\$ \_\_\_\_\_), divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each.

*In Testimony Whereof*, We have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

(Signatures.)

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

*Be It Remembered*, That on this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 \_\_\_\_\_, before the undersigned, personally appeared the above named \_\_\_\_\_ well and personally known to me to be the same persons described in, and who executed the foregoing instrument, and severally duly acknowledged to me that they executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal at said county, the day and year last above written.

\_\_\_\_\_, *Notary Public.*

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

\_\_\_\_\_ and \_\_\_\_\_, being duly sworn, each for himself deposes and says: That he is one of the persons described in, and who signed the foregoing Articles of Incorporation as an incorporator therein; that he has read the said articles and knows the contents thereof; that the incorporators intended in good faith to form a corporation for the purpose of a lawful business as set forth in said articles, and not for the purpose of enabling any corporations to avoid the provisions of sections 770 to 781 inclusive of the Revised Penal Code of 1903 of the State of South Dakota relating to unlawful trusts and combinations, and laws amendatory thereto.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 \_\_\_\_\_.

\_\_\_\_\_, *Notary Public.*

## STATE OF TENNESSEE (ORDINARY FORM PRESCRIBED BY STATUTE).

### CHARTER OF INCORPORATION.

*Be It Known*, That by virtue of the general laws of the land (here insert names of incorporators) are hereby constituted a body politic and corporate, by the name and style of \_\_\_\_\_ for the purpose of \_\_\_\_\_.

The capital stock of said corporation shall be \_\_\_\_\_ dollars.

The general powers of said corporation are: To sue and be sued by the corporate name; to have and use a common seal, which it may alter at pleasure; if no common seal, then the signature of the name of the corporation by any duly authorized officer shall be legal and binding; to purchase and hold or receive by gift,



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment or part payment of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws and make all rules and regulations, not inconsistent with the laws and Constitution, deemed expedient for the management of corporate affairs, and to appoint such subordinate officers and agents in addition to a President, Secretary, or Treasurer, as the business of the corporation may require, designate the name of the office, and fix the compensation of the officer.

The following provisions and restrictions are coupled with said grant of powers: A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors. The term of all officers may be fixed by the by-laws of the corporation; the same not, however, to exceed two years. The corporation may, by by-laws, make regulations concerning the subscriptions for, or transfer of stock; fix upon the amount of capital to be invested in the enterprise; the division of the same into shares; the time required for payment thereof by the subscribers for stock; the amount to be called for at any one time, and in case of failure of any stockholder to pay the amount thus subscribed by him at the time and in the amounts thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for the same. The Board of Directors — which may consist of five or more members, at the option of the corporation, to be elected either in person or by proxy, by a majority of the votes cast, each share representing one vote — shall keep a full and true record of all their proceedings, and an annual statement of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder. The books of the corporation shall show the original or subsequent stockholders, their respective interests, the amount which has been paid on the shares subscribed, the transfer of stock, by and to whom made; also other transactions in which it is presumed a stockholder or creditor may have an interest.

The amount of any unpaid stock due from a subscriber to the corporation shall be a fund for the payment of any debts due from the corporation, nor shall the transfer of stock by any subscriber relieve him from payment unless his transferee has paid up all or any of the balance due on said original subscription.

By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which the charter is granted, and by no inference whatever shall said corporation possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debts as currency, or engage in any business outside the purpose of the charter.

The right is reserved to repeal, annul, or modify this charter. If it is repealed, or if the amendments proposed, being not merely auxiliary but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications being fundamental are accepted by the corporation as aforesaid, in a general meeting to be called for that purpose, any minor, married woman, or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders as aforesaid; *Provided*, That the claims of all creditors are to be paid in preference to said withdrawing stockholders.

A majority of the Board of Directors shall constitute a quorum and shall fill all vacancies until the next election. The first Board of Directors shall consist of the five or more incorporators who shall apply for and obtain the charter.

The said corporation may have the right to borrow money and issue notes or bonds upon the faith of the corporate property, and also to execute a mortgage or mortgages as further security for repayment of money thus borrowed.

## FORMS AND PRECEDENTS.

Said corporation shall have the power to raise, buy, sell, and deal in agricultural products, operate flouring and other mills, and deal in merchandise.

Annually, during the month of January, the President shall make and publish in a newspaper printed in the county where the principal office of business is located, or if no newspaper is printed in that county, then in an adjoining, or the nearest county where a newspaper is printed, a sworn statement, showing the amount of the capital stock and existing liabilities, and a list of the names of the stockholders.

Nothing but cash shall be taken in payment of any part of the capital stock, or land at a fair cash valuation, or patents to the amount of their value, as agreed on by the subscriber and the corporation, and no loan of money shall at any time be made to any stockholder thereof, and any such loan shall render the Directors consenting thereto individually liable for the amount thereof; this liability to extend in favor of innocent stockholders as well as creditors.

The making of a false statement, to be printed as aforesaid, shall render all persons assenting thereto individually liable to all persons dealing or trading with said Company upon the faith of said fraudulent statement.

If the indebtedness of said Company shall at any time exceed the capital stock paid in, the Directors assenting thereto shall be individually liable to the creditors for said excess. The stockholders are jointly and severally liable individually at all times, for all moneys due and owing to the laborers, servants, clerks, and operatives of the Company in case the corporation becomes insolvent.

If the Directors declare and pay any dividend when the Company is insolvent, on which declaration of a dividend would diminish the amount of the capital stock, they shall be jointly and severally liable to creditors for the amount of dividends thus declared. Any Director may avoid liability by voting against the dividend, or by filing his objections in writing as soon as he ascertains a dividend has been made.

We, the undersigned, apply to the State of Tennessee, by virtue of the laws of the land, for a Charter of Incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this                      day of                      , 190 .

### TEXAS.

#### FORM OF CHARTER.

State of Texas }  
County of        } ss.

*Know all Men by these Presents*, That we,                      , and                      , all citizens of                      County, Texas, under and by virtue of the laws of this state, do hereby form and incorporate ourselves into a voluntary association under the terms and conditions hereinafter set out, as follows:

1. The name of the corporation is
2. The purpose for which it is formed (here quote statutory purpose).
3. The place where the business of the corporation is to be transacted is at                      County, Texas.
4. The term for which it is to exist is                      years.
5. The number of directors, their names and postoffice addresses are as follows:  
\_\_\_\_\_  
\_\_\_\_\_
6. The amount of the capital stock is \$                      divided into                      shares of \$                      each, at least fifty per cent of which capital stock has been subscribed and ten per cent paid in.

*In Testimony Whereof*, we hereto sign our names this the                      day of                      , A. D. 190 .

State of Texas }  
County of        } ss.

Before me, the undersigned authority on this day personally appeared                      and                      known to me to be the persons whose names are sub-

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

scribed to the foregoing instrument, and severally acknowledged to me that he executed the same for the purposes and consideration herein expressed.

*In Testimony Whereof*, I hereto subscribe my name and affix the seal of my office, this the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

State of Texas, }  
County of \_\_\_\_\_ }

I, \_\_\_\_\_, of \_\_\_\_\_ County, Texas, upon oath do hereby state that fifty per cent of the authorized capital stock of said \_\_\_\_\_, amounting to \_\_\_\_\_ dollars, has been subscribed, and ten per cent of such authorized capital stock, amounting to \_\_\_\_\_ dollars, has been paid in.

Sworn to and subscribed before me by \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19 .  
\_\_\_\_\_, Notary Public,  
\_\_\_\_\_ County, Texas.

## UTAH.

### ARTICLES OF INCORPORATION.

OF  
\_\_\_\_\_.

THIS AGREEMENT made and entered into by and between \_\_\_\_\_, all of \_\_\_\_\_, State of Utah, *Witnesseth*:

That the parties are desirous of forming a corporation under the laws of the State of Utah for the purposes and on the terms hereinafter stated:

#### *Article One.*

Said corporation shall be called and known by the name of \_\_\_\_\_, and is organized at \_\_\_\_\_.

#### *Article Two.*

Said corporation shall exist and continue for a term of fifty years unless sooner dissolved or disincorporated according to law.

#### *Article Three.*

The object, business, and pursuit of said corporation shall be to:

#### *Article Four.*

The place of the general office and business of said corporation shall be at \_\_\_\_\_, State of Utah.

#### *Article Five.*

The amount of the capital stock of said corporation shall be \_\_\_\_\_ shares of the face or par value of \_\_\_\_\_ dollars each.

#### *Article Six.*

The amount of the capital stock subscribed by each of the incorporators above named, parties to this agreement, is as follows, that is to say:

#### *Article Seven.*

The officers of said corporation shall be:

#### *Article Eight.*

To be eligible to an office in this corporation the person must be the owner, as shown by the books of the corporation, of at least one share of the capital stock thereof, and the President and Treasurer must be directors of said corporation; the Secretary may or may not be a director of said corporation, and if a director may be joined with the office of Treasurer.

## FORMS AND PRECEDENTS.

### *Article Nine.*

The following named persons, parties hereto, shall be directors of said corporation until the next annual meeting of the stockholders thereof, as hereinafter provided, namely: . And the said shall be President, said

shall be Secretary and Treasurer, and until their successors shall be duly elected and qualified. Any vacancy caused by the resignation, death, or removal of either or any of the said directors or officers, may be filled by the Board of Directors.

### *Article Ten.*

The term of office of the officers of said corporation after the first annual meeting, shall be , and until their successors shall be duly elected and shall have duly qualified.

### *Article Eleven.*

The annual stockholders' meeting of said corporation for the election of officers and for the transaction of any such other business as shall lawfully come before it, shall be held on the in each year, at , Utah, and representation of a majority of the capital stock of said corporation shall be necessary to legally hold said meeting, and all stockholders' meetings of said corporation shall be either general or special. The officers of said corporation, at such meetings, shall be elected and declared to be elected to said offices respectively. Each stockholder shall be entitled to as many votes as he holds of said capital stock. Stock representation, by proxy, duly appointed, shall be allowed at all meetings of said corporation, either general or special. No public notice shall be required of the holding of the annual stockholders' meetings. Special meetings of the stockholders may be called by the President or by any directors, and notice thereof shall be sufficient if personally served on each stockholder, or by letter post-paid, addressed to him at his place of residence.

### *Article Twelve.*

\_\_\_\_\_ members of the Board of Directors shall constitute a quorum to transact business of the corporation.

### *Article Thirteen.*

The private property of the stockholders of the corporation shall not be liable for the debts of the corporation.

### *Article Fourteen.*

Any director or officer of said corporation may be removed at a stockholders' meeting, general or special, by vote of two-thirds of the capital stock of this corporation, and any officer or director may resign by filing a written resignation with the Secretary of the corporation.

### *Article Fifteen.*

The capital stock of said corporation subscribed by is fully paid by the conveyance to said corporation by of the . (For all corporations but mining and irrigation companies there must be inserted here a full description of the property conveyed having a fair cash value equal to the par value of the stock for which it is transferred.)

### *Article Sixteen.*

It shall be the duty of the Board of Directors to elect a manager who shall have the general supervision and management of the business of said corporation.

*In Witness Whereof*, said parties have hereunto set their hands and seals the day and year first above written.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

State of Utah, }  
County of } ss.

, being each severally duly sworn, on oath do depose and say that they have commenced to carry on, and it is their *bona fide* intention to carry on, the business mentioned in the foregoing agreement and Articles of Incorporation, and affiants verily believe that each party to said agreement has paid and is able to and will pay the amount of stock subscribed for by him, and that ten per cent of the capital stock and ten per cent of the stock subscribed by each stockholder has been paid in.

\_\_\_\_\_  
\_\_\_\_\_  
Subscribed in my presence and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

(In the case of all but mining and irrigation companies the following affidavit must be made.)

State of Utah, }  
County of } ss.

, and , being each severally sworn, on oath deposes and says that he has examined and appraised the \_\_\_\_\_ conveyed by \_\_\_\_\_ to the corporation by these articles formed, in full payment of their capital stock, and they do each hereby on their oath say that the said property so conveyed to said corporation is reasonably worth the sum of \_\_\_\_\_ dollars, and that said sum of \_\_\_\_\_ dollars is a fair cash market value of said property.

Subscribed in my presence \_\_\_\_\_ and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

## VERMONT.

### ARTICLES OF ASSOCIATION

OF THE  
\_\_\_\_\_.

We, the subscribers, hereby associate ourselves together as a corporation under the laws of the State of Vermont, to be known by the name of \_\_\_\_\_, for the purpose of \_\_\_\_\_ at \_\_\_\_\_, in the County of \_\_\_\_\_, in the State of Vermont, with a capital stock of \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of \_\_\_\_\_ dollars each.

Dated at \_\_\_\_\_, in the County of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

Subscribers.

Post-Office Address.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FORMS AND PRECEDENTS.

VIRGINIA.

CERTIFICATE OF INCORPORATION

OF

\_\_\_\_ (Corporation or Incorporated).

This is to certify that we do hereby associate ourselves to establish a corporation under and by virtue of the provisions of an Act of the General Assembly of the State of Virginia, entitled "An Act Concerning Corporations," which became a law on the 21st day of May, 1903, for the purposes and under the corporate name hereinafter mentioned, and to that end we do, by this our certificate, set forth as follows:

*First.* The name of the corporation is to be \_\_\_\_\_ Company (or Incorporated).

*Second.* The name of the county (city, or town) wherein the principal office in this State is to be located is:

*Third.* The purposes for which it is formed are as follows:

*Fourth.* The maximum amount of the capital stock of the corporation is to be \_\_\_\_\_ dollars; the minimum amount of the capital stock of the corporation is to be \_\_\_\_\_ dollars, and the capital stock of the corporation is to be divided into \_\_\_\_\_ shares of \_\_\_\_\_ dollars each.

(If preferred stock is to be issued, a statement of the amount, together with the terms on which it is created, must be here set forth.)

*Fifth.* The period for the duration of the corporation is unlimited.

*Sixth.* The names and residences of the officers and directors who, unless sooner changed by the stockholders, are for the first year to manage the affairs of the corporation are as follows:

Officers.	Offices.	Residences.
_____	_____	_____
_____	_____	_____
_____	_____	_____
Directors.		Residences.
_____		_____
_____		_____
_____		_____

*Seventh.* The amount of real estate to which its holdings at any time are to be limited is \_\_\_\_\_ acres.

*Eighth.* The following provisions for the regulation of the business and the conduct of the affairs of the corporation are hereby established.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_, 190 . (Signatures.)

State of Virginia,  
County of \_\_\_\_\_, to wit:

I, \_\_\_\_\_, a Notary Public, for the county aforesaid in the State of Virginia, do certify that \_\_\_\_\_, and \_\_\_\_\_, whose names are signed to the writing above, bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 190 , have acknowledged the same before me in my county aforesaid. My term of office expires on the \_\_\_\_\_ day of \_\_\_\_\_, 190 .

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 190 . , Notary Public.

VIRGINIA.

In the Circuit Court of \_\_\_\_\_ County.

The foregoing certificate of incorporation of the \_\_\_\_\_ Company, incorporated, was presented to me \_\_\_\_\_, Judge of the \_\_\_\_\_ Court of \_\_\_\_\_ in term time (or in vacation), and having been examined by me, I there-

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

upon certify hereon that the said certificate of incorporation is, in my opinion, signed and acknowledged in accordance with the requirements of the Act of the General Assembly of Virginia, entitled "An Act Concerning Corporations," which became a law on the 21st day of May, 1903, for such cases made and provided.

Given under my hand this                      day of                      , 190                      , Judge.

### WASHINGTON.

#### ARTICLES OF INCORPORATION

##### OF THE

We, the undersigned persons, one of whom is a resident of the State of Washington and a majority of whom are citizens of the United States, hereby associate ourselves for the purpose of forming a corporation, and for that purpose execute these Articles of Incorporation in triplicate.

*Article First.* The name of this corporation shall be :

*Article Second.* The objects for which this corporation is formed are : To have offices, conduct its business, and promote its objects both within and without the State of Washington, and in all parts and places elsewhere, wherever may be desired, without any restriction whatsoever as to place, upon compliance with the laws of such place.

*Article Third.* The capital stock of this corporation shall be                      dollars, divided into                      shares of the par value of                      dollars a share. (If preferred stock is issued, add :) Of such capital stock                      shares, amounting to                      dollars, shall be preferred stock, and                      shares, amounting to                      dollars, shall be common stock. The preferred stock shall be entitled out of any and all surplus net profits, whenever declared by the trustees, to non-cumulative dividends at the rate of, but not to exceed                      per cent (not to exceed twelve per cent) per annum for the fiscal year beginning on the day of 19                      , and to priority of payment of any dividend on the common stock for such fiscal year. The common stock shall be subject to the prior rights of the holders of the preferred stock as herein above set forth. If, after providing for the payment in full of the dividends for any fiscal year on the preferred stock, there shall remain any surplus net profits of such year, and of any other fiscal year for which full dividends shall have been paid on the preferred stock, then and from time to time the same shall be declared by the trustees: and out of such surplus net profits, after the close of any said fiscal year, the trustees may declare a dividend upon the common stock of this corporation for such fiscal year. No dividend, however, shall be paid upon any common stock until after the dividends upon the preferred stock have been set aside to the owners of the said preferred stock.

In case of the liquidation or dissolution of this corporation, the holders of preferred stock shall receive the par value of their preferred shares out of the surplus funds of the corporation before anything shall be paid therefrom to the holders of the common stock. (If non-assessable stock is desired, as :) The capital stock of this corporation (is issued fully paid up and) shall be and is hereby made absolutely and forever non-assessable by this corporation for any purpose.

*Article Fourth.* The time of existence of this corporation shall be fifty years.

*Article Fifth.* The number of trustees of this corporation shall not be less than two nor more than                      , and the names of the first trustees who shall manage the affairs of this Company until the                      day of                      , 19                      (not less than two nor more than six months) are                      (two or more).

*Article Sixth.* The Board of Trustees shall have power to make the By-Laws of this corporation.

## FORMS AND PRECEDENTS.

*Article Seventh.* The stockholders and trustees shall have power to hold their meetings and to keep the books, documents, and papers of this corporation without the State of Washington, at such place or places as the Board of Trustees may determine, except such books and meetings as are required by the law of the State of Washington to be kept and to be held within the State. (Note: The annual election of trustees must be held within the State. Their election may be held by instructed proxies sent to the resident trustee. The law further requires that the trustees cause a book to be kept at the principal place of business, which book shall contain the "names of all persons, alphabetically arranged, who are or shall be stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares.")

*Article Eighth.* The principal place of business of this corporation shall be in the City of \_\_\_\_\_, \_\_\_\_\_ County, State of Washington, with such branch office or offices, either within or without the State of Washington, as the trustees may desire, at any of which branch offices, as may be selected by the trustees, all stockholders' and trustees' meetings not required to be held in the State of Washington may be held: Provided, That this corporation shall at all times keep at its principal place of business within this State a resident trustee.

In Witness Whereof, we have this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, hereunto set our hands and seals in triplicate.

(SEAL.)  
(SEAL.)

Witness:

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ }

I, \_\_\_\_\_, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned, sworn, and qualified, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the individuals described in, and who executed the within instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_, \_\_\_\_\_, Notary Public.

### TRUSTEE'S OATH OF OFFICE.

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ }

each being duly sworn, on oath deposes and says:  
That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I was duly and regularly elected a trustee of \_\_\_\_\_, a corporation with its principal place of business in the City of \_\_\_\_\_, in the County of \_\_\_\_\_, and State of Washington, to serve as such trustee until the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. That I will faithfully and conscientiously perform all duties of my said office as such trustee.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
\_\_\_\_\_, Notary Public.

## WEST VIRGINIA.

### CERTIFICATE OF INCORPORATION.

- I. We, the undersigned, agree to become a corporation by the name of \_\_\_\_\_
- II. The principal place of business of said corporation shall be located at No. \_\_\_\_\_



# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

, Street, in the City (2) town, village of , in the county of  
and State of . Its chief works will be located in (3)

(Insert number and name of street if in a city having street numbers: if not, strike out. 2. Erase the word city, town, or village as the case may be. 3. Give location of chief works of, at same place as principal place of business; say, "The Chief Works will be located at the same place." If the chief works are not in West Virginia, it is only necessary to state the name of the State or Territory in which they are located; if the chief works and principal place of business are both in West Virginia, then it is necessary to state the magisterial District and County in which the chief works are located, thus, "in the District of , in the County of , in the State of West Virginia," or, if the nature of the case may require it, say "in the district of and County of, and elsewhere in the State of West Virginia." If there be no chief works, say, "Said Corporation will have no chief works.")

III. The objects and purposes for which this corporation is formed are as follows:

IV. The amount of the total authorized capital stock of said corporation shall be dollars, which shall be divided into shares of the par value of dollars each; of which authorized capital stock the amount of dollars has been subscribed, and the amount of dollars has been paid.

V. The names and post-office addresses of all the incorporators, and the number of shares of stock subscribed for by each are as follows:

Names. (7)	Post-Office Addresses. (8)	No. of Shares Common Stock.	No. of Shares Preferred Stock.	Total No. of Shares. (9)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

VI. This corporation is to expire (1)

VII. (Here insert any special provisions desired; and also number of acres of land desired to hold in West Virginia, if such number be above ten thousand acres.)

Given under our hands this day of , 190 .  
(All the incorporators must sign here.)

State of }  
County of } ss.

I, , a Notary Public in and for the County and State aforesaid, hereby certify that , whose names are subscribed to the foregoing agreement bearing date the day of , 190 , this day personally appeared before me in my said county, and severally acknowledged their signatures to the same.

And I further certify that and , two of the incorporators named in said agreement, made oath before me that the amount therein stated to have been paid on the capital has been in good faith paid in, for the purpose and business of the intended corporation, without any intention or understanding that the same shall be withdrawn therefrom before the expiration or dissolution of this Corporation.

Given under my hand and official seal this day of , 190 .  
, Notary Public.

(The following affidavit must be made by at least two of the incorporators named in the agreement wherein it is stated that the "principal place of business" is located in West Virginia, and for which it is proposed to pay the rate of annual license tax prescribed for resident corporations.)

State of }  
County of } ss.

I, , a Notary Public in and for the County and State aforesaid, do hereby certify that and , two of the persons who have executed the foregoing agreement, bearing date of the day of

## FORMS AND PRECEDENTS.

, 190 , this day personally appeared before me in my said county, and made oath that the statement in said agreement, to wit, "that the principal place of business of said corporation shall be located at \_\_\_\_\_ in the County of \_\_\_\_\_ and State of West Virginia" is true, and that said principal place of business and chief works have been located as therein stated in good faith, and not for the purpose of evading any law of the State of West Virginia, and especially not for the purpose of avoiding the payment of the difference between the amount of the annual license tax on the charters of corporations having their principal place of business within the State of West Virginia, and those corporations having their principal place of business or chief works without said State; and that said corporation named in said agreement proposes in good faith to carry on its business and to have its principal place of business and its chief works (if it have such) within the State of West Virginia.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 190 .  
\_\_\_\_\_, Notary Public.

(SEAL.)

## WISCONSIN.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, adult residents of the State of Wisconsin, do hereby make, sign, and agree to the following

### ARTICLES OF ORGANIZATION.

*Article I.* The undersigned have associated, and do hereby associate themselves together for the purpose of forming a corporation under Chapter 86 of the Wisconsin Statutes of 1898, and the acts amendatory thereof and supplementary thereto, the business and purposes of which corporation shall be \_\_\_\_\_, which said business is to be carried on within the State of \_\_\_\_\_, and especially within the County of \_\_\_\_\_ in said State.

*Article II.* The name of said corporation shall be \_\_\_\_\_, and its location shall be in the \_\_\_\_\_, Wisconsin.

*Article III.* The capital stock of said corporation shall be \_\_\_\_\_, and the same shall consist of \_\_\_\_\_ shares, each of which said shares shall be of the face or par value of \_\_\_\_\_ dollars.

*Article IV.* The general officers of said corporation shall be a President, Vice-President, Secretary, and Treasurer, \_\_\_\_\_ and the Board of Directors shall consist of \_\_\_\_\_ stockholders. (Provision may be here made for dividing the directors into three classes if desired.)

*Article V.* The principal duties of the President shall be to preside at all meetings of the Board of Directors, \_\_\_\_\_ and to have a general supervision of the affairs of the corporation.

The principal duties of the Vice-President shall be to discharge the duties of the President in the event of the absence or disability, for any cause whatever, of the latter.

The principal duties of the Secretary shall be to countersign all deeds, leases, and conveyances executed by the corporation, affix the seal of the corporation thereto, and to such other papers as shall be required or directed to be sealed, and to keep a record of the proceedings of the Board of Directors, and to safely and systematically keep all books, papers, records, and documents belonging to the corporation, or in any wise pertaining to the business thereof.

The principal duties of the Treasurer shall be to keep and account for all moneys, credits, and property, of any and every nature, of the corporation, which shall come in his hands, and keep an accurate account of all moneys received and disbursed, and proper vouchers for moneys disbursed, and to render such accounts, statements, and inventories of moneys received and disbursed, and of money and property on hand, and generally of all matters pertaining to this office, as shall be required by the Board of Directors.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

The Board of Directors may provide for the appointment of such additional officers as they may deem for the best interests of the corporation.

Whenever the Board of Directors may so order, the offices of Secretary and Treasurer may be held by the same person.

The said officers shall perform such additional or different duties as shall from time to time be imposed or required by the Board of Directors, or as may be prescribed from time to time by the By-Laws.

*Article VI.* Only persons holding stock according to the regulations of the corporation shall be members of it.

*Article VII.* These articles may be amended by resolution setting forth such amendment or amendments, adopted at any meeting of the stockholders by a vote of at least two-thirds of all the stock of said corporation then outstanding.

*Article VIII.* The existence of this corporation shall be \_\_\_\_\_ years (or perpetual).

*Article IX.* (Any other provisions for the regulation of the internal affairs of the corporation not inconsistent with law may be inserted.)

*In Witness Whereof*, we have hereunto set our hands, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

Signed in presence of \_\_\_\_\_

State of Wisconsin, }  
County of \_\_\_\_\_ } ss.

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 , the above named \_\_\_\_\_, to me known to be the persons who executed the foregoing instrument, and acknowledged the same.

\_\_\_\_\_, *Notary Public*, Wisconsin.

State of Wisconsin, }  
County of \_\_\_\_\_ } ss.

\_\_\_\_\_ and \_\_\_\_\_, being each duly sworn, doth each for himself depose and say that he is one of the original signers of the above declaration and articles; that the above and foregoing is a true, correct, and complete copy of such original declaration and articles, and of the whole thereof. Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

\_\_\_\_\_, *Notary Public*.

## WYOMING.

### CERTIFICATE OF INCORPORATION

OF THE

\_\_\_\_\_  
COMPANY.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, citizens of the United States, over the age of twenty-one years, desiring to aid in the industrial (or productive) interests of the country, do by these presents voluntarily associate ourselves together for the purpose of forming a corporation, under the laws of the State of Wyoming.

And we hereby certify:

*First.* That the corporate name of our said corporation is and shall be the \_\_\_\_\_ Company.

*Second.* That the object for which our said corporation or Company is formed is (here state object, confining same to one general line or department).

*Third.* The capital stock of our said Company shall be \_\_\_\_\_ dollars, to be divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each and non-

# FORMS AND PRECEDENTS.

assessable. (If preferred stock is to be issued, provision therefor must be inserted at this point.)

*Fourth.* The term of existence of our said Company shall be (not exceeding fifty years), from and after the date of this certificate.

*Fifth.* The affairs and management of our said Company shall be under the control of trustees (not less than three, nor more than nine), and are hereby selected and appointed to act as such trustees, and to manage the affairs and concerns of our said Company for the first year of its existence, and until their successors are elected and qualified according to law and the by-laws of our said Company.

*Sixth.* The name of the town in which the operations of our said Company shall be carried on is the City of , County of , and State of

(if the Company is formed for the purpose of carrying on any part of its business in any place outside of the State, add: "and the said business is also formed for the purpose of carrying on part of its business outside of the State of Wyoming, to wit, in the City of , County of , and State of , and elsewhere in the United States as the trustees of our said Company may by resolution or otherwise direct"), but the name of the town and county in which the principal part of the business within the State of Wyoming is to be transacted is the City of , in the said County of , at which place its principal office and place of business shall be located.

*Seventh.* All suits against our said Company shall be commenced in the said County of .

*In Witness Whereof*, we have executed this certificate in duplicate this day of , A. D. 19 .

If the adoption of by-laws is to be delegated to the trustees, the following clause should be inserted: The trustees of our said Company shall have the exclusive power to make such prudential by-laws as they may deem proper for the management and disposition of the stock and business affairs of our said Company, not inconsistent with the laws of the State, prescribing the duties of officers, artificers, and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of our said Company.

(L. S.)  
(L. S.)  
(L. S.)

Witnesses:

State of Wyoming, }  
County of } ss.

I, , a Notary Public in and for the said County and State, do hereby certify that , who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and each separately acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

My commission expires

Given under my hand and notarial seal this day of , A. D. 190 .  
, Notary Public.

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## COMPOSITE FORM OF MINUTES

For New York, New Jersey, South Dakota, Arizona, Nevada, West Virginia, Delaware, District of Columbia, and other States.

(In District of Columbia in all cases use "Trustee" for "Director," and "District" for "State.")

### MINUTES OF INCORPORATORS' MEETING.

#### COMPANY.

1. The first meeting of the corporation was held on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at the (principal or business) office of the company, in the City of \_\_\_\_\_, State of \_\_\_\_\_, pursuant to a written waiver of notice, signed by all the incorporators fixing said time and place.
2. The following incorporators were present in person:

\_\_\_\_\_

The following incorporators were represented by proxy:

\_\_\_\_\_

3. On motion duly made and seconded, Mr. \_\_\_\_\_ was elected Chairman, and Mr. \_\_\_\_\_ was appointed Secretary of the meeting.

4. The Chairman reported that the certificate of incorporation of the company had been filed in the office of the Secretary of State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 190\_\_\_\_. The Secretary presented a copy of said certificate of incorporation, and on motion duly made and seconded, a copy thereof was ordered spread upon the minutes:

(Insert copy of certificate of incorporation.)

(In the following States Section 4 is omitted and sections referred to inserted in its place: Delaware, A; Arizona, A; New Jersey, A.)

5. The Secretary presented and read the waiver of notice of the meeting, which was ordered spread upon the minutes:

(Insert waiver of notice.)

6. The proxy (or proxies) above mentioned was (or were) presented and ordered filed.

(Form of proxy same in all States. See Appendix.)

7. Messrs. \_\_\_\_\_ and \_\_\_\_\_ were appointed inspectors of election, and the oath was duly administered to them.

(All States except New York, South Dakota, and District of Columbia. In the two latter provision as to inspectors omitted.)

8. The Secretary presented a form of by-laws for the regulation of the affairs of the company, which were read article by article and unanimously adopted, and a copy thereof ordered spread upon the minutes:

(Insert by-laws.)

9. The Secretary presented the following transfers of subscription, to take effect when accepted by the company.

Transferror.	Transferee.	No. of Shares.
--------------	-------------	----------------

_____	_____	_____
-------	-------	-------

(Form of transfer same for all States. See Appendix.)

(Not necessary in States where incorporators need not be subscribers to stock; for example, South Dakota, Arizona, and District of Columbia.)

On motion duly made and seconded, said transfers were accepted in behalf of the company.

10. (New York, South Dakota, and District of Columbia.) On motion duly made and seconded, it was

## FORMS AND PRECEDENTS.

*Resolved*, that the Board of Directors as named in the Articles of Incorporation, be and they hereby are elected members of the Board of Directors for the ensuing year and until their successors are elected and qualify :

(For Delaware see Delaware B ; for Arizona see Arizona B ; for New Jersey, West Virginia, and Nevada see New Jersey B.)

11. On motion duly made and seconded, it was

*Resolved*, that in compliance with the laws of \_\_\_\_\_ and the certificate of incorporation of the company, the principal (or registered) office of the company in \_\_\_\_\_ be established and maintained at the office of the Company (and that a sign with the company's name thereon be conspicuously displayed at the entrance of said office, Note A.) and be it further

(Note A. Insert where required by statute.)

(The following inserted for New Jersey, Delaware, Arizona, and West Virginia.)

*Resolved*, that \_\_\_\_\_ be and he hereby is appointed the agent of this company in charge of said office and upon whom process against this company may be served ; and be it further

*Resolved*, that the President and Secretary be and they hereby are authorized to sign and seal with the company's seal a certificate of authorization to said Incorporating Company in the form presented at this meeting.

12. Upon motion duly made and seconded, and by the affirmative vote of all present, it was

*Resolved*, that the Board of Directors be and they hereby are authorized and directed to issue shares of the capital stock of this company to the full amount authorized by the certificate of incorporation, in such amounts from time to time as may be determined by the Board and as may be permitted by law, and in their discretion to accept in full or part payment of any share or shares such property as the Board may determine shall be necessary for the business of the company.

13. (The following clause is inserted where stock is made full paid by issuance of stock for property or patent rights. This form is applicable to all States.)

Upon motion duly made and seconded, and by the affirmative vote of all present, the following preambles and resolution were unanimously adopted :

*Whereas*, \_\_\_\_\_ has offered to assign to this company the following described property (if property, give description sufficient to identify the same ; if patent rights, give number of patent, date of issue and name and description of article patented), all in consideration of the issuance stock of this company to the amount of \_\_\_\_\_ dollars ; and

*Whereas*, it appears to the stockholders that such property (patent rights, etc.) is necessary for the business of the company, and that the same is of the value of \_\_\_\_\_ dollars ; Now, therefore, be it

*Resolved*, that the Board of Directors be and they hereby are authorized in their discretion, to purchase the property (patent rights, etc.), above mentioned, for the said price and to issue said stock in payment thereof.

14. Upon motion duly made and seconded, and by the affirmative vote of all present, the following preambles and resolution were adopted :

*Whereas*, it has been agreed between each of the incorporators and \_\_\_\_\_ (name of transferror), that the stock to be issued in payment of the property authorized to be purchased by the resolution set forth above shall include the stock subscribed by the incorporators : Now, therefore, be it

*Resolved*, that the Board of Directors be and they hereby are authorized and directed to accept said property (patent rights, etc.) as full payment of the subscription for stock of the incorporators, and to issue full-paid stock to the incorporators or their assigns to the amount of their respective subscriptions.

(This section is omitted where the incorporators are not subscribers to the stock.)

No further business was presented, and on motion the meeting adjourned.

, Secretary.

Approved :

, Chairman.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

(Delaware A.) The Chairman reported that the certificate of incorporation of the company was filed on the            day of            190 , at o'clock in the            noon in the office of the Secretary of State, and a certified copy thereof recorded in the office of the Recorder of Deeds for the County of New Castle, on the            day of            190 , in Certificate of Incorporation Records, vol.            page            , etc., and presented a copy of said certificate of incorporation, which was, on motion duly made and seconded, ordered spread upon the minutes:

(Delaware B.) On motion duly made and seconded, it was

*Resolved*, that the incorporators proceed to the election of Directors. The polls were thereupon opened, and remained open until all the incorporators had voted. The polls thereupon being closed, the vote was canvassed, and the Chairman reported that the following named persons were unanimously elected Directors  
votes representing            shares having been cast for each of said persons, to wit:

Name.

Number of Votes.

The Secretary reported that all the newly elected Directors were subscribers to at least three shares of stock of the company and therefore eligible to nomination and election as Directors.

(Arizona A.) The Chairman reported that the certificate of incorporation of the company was filed in the office of the County Recorder of Maricopa County, Territory of Arizona, on the            day of            190 , and a certified copy thereof filed in the office of the Territorial Auditor on the            day of            190 , and presented a copy of said certificate of incorporation. On motion duly made and seconded, a copy thereof was ordered spread upon the minutes:

(Arizona B.) Messrs.            were nominated for directors of the company to hold office for the ensuing year. No other nominations having been had, the polls were duly opened, and ballot having been duly had, and all the stockholders having voted, the poles were declared closed, and the Chairman announced that the foregoing gentlemen had been duly elected Directors of the Company.

(New Jersey A.) The Chairman reported that the certificate of incorporation of the company was recorded in the office of the Clerk of            County, on the            day of            190 , and was filed on the            day of            190 , in the office of the Secretary of State, and presented a copy of said certificate of incorporation, which was, on motion duly made and seconded, ordered filed, and a copy thereof ordered spread upon the minutes:

(New Jersey B.) Messrs.            were nominated for Directors of the company, to hold office for the ensuing year. No other nominations having been made, the polls were duly opened, and ballot having been duly had, and all the stockholders having voted, the polls were declared closed, and the inspectors presented their certificate showing that the aforesaid gentlemen had been duly elected Directors of the company.

## APPENDIX.

### WAIVER OF NOTICE OF MEETING OF INCORPORATORS.

We, the undersigned, incorporators of the            Company, a corporation under the laws of the State of            , hereby waive notice of the time, place, and purpose of the first meeting of the corporation, and fix the            day of            190 , at            o'clock in the            noon, as the time, and the office of the company in the City of            as the place of said meeting.

And we do hereby waive all requirements of the statutes of            as to notice of this meeting and publication thereof; and consent to the transaction of such business as may come before said meetings.

Dated            190 .

### PROXY. MEETING OF INCORPORATORS.

The undersigned (Note A — a subscriber to            shares of stock of the capital stock of            Company) hereby appoints            as proxy

## FORMS AND PRECEDENTS.

with full power of substitution and revocation to vote for and on behalf of the undersigned at the first meeting of the corporation to be held , 190 , and at any adjournment thereof.

NOTE A. (Where the statute does not require company to begin business with a fixed amount, Part A can be omitted. Therefore omit in South Dakota, Arizona, and District of Columbia.)

Witness my hand and seal this                      day of                      , 190 .  
In presence of

### TRANSFER OF SUBSCRIPTION.

The undersigned, for good and valuable considerations received, has sold, assigned, transferred, and set over, and by these presents does sell, assign, transfer, and set over unto                      the right, title, and interest of the undersigned as a subscriber to and an incorporator of the                      Company, to the extent of shares of the capital stock thereof, and hereby requests and directs the said company to issue the certificate for said share to the aforesaid transferee or his nominee or assigns.

This transfer to take effect upon the acceptance thereof by the company, the undersigned meanwhile retaining the right to vote upon said shares.

In Witness Whereof, I have hereunto set my hand and seal this                      day of                      , 190 .

Witness :

### INSPECTORS' OATH AND CERTIFICATE.

State of                      }  
County of                      } ss.

and                      being severally sworn, upon their respective oaths do promise and swear that they will faithfully, honestly, and impartially perform the duties of inspectors of election, to be held this day for Directors of the Company, and a true report made of the same.

Subscribed and sworn to before  
me this                      day of                      , 190 .

### NOTARY PUBLIC.

The undersigned, inspectors of election, report that having taken an oath impartially to conduct the election of directors of the above-named company, we did receive the votes of the stockholders by ballot, and that the following persons received the number of votes set opposite their respective names, to wit:

For Directors.

Number of Votes.

Dated

, Inspectors.

### MINUTES OF THE FIRST MEETING OF DIRECTORS.

1. The first meeting of the board of directors of                      Company was held at the office of the company in the City of                      , State of                      , on the day of                      , 190 , at                      o'clock in the                      noon.

2. Present: Messrs.                      constituting a majority of the board of directors.

3. Mr.                      was chosen temporary chairman, and Mr.                      was appointed temporary secretary of the meeting.

4. The secretary presented and read a waiver of notice of the meeting, signed by all the directors, and same was ordered spread upon the minutes :

(For form of waiver, see Appendix. Same in all States.)

5. (Insert following clause for New York only : )  
Messrs.                      and                      were appointed inspectors of election for the ensuing year.

6. The minutes of the first meeting of incorporators were read.



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

7. The following gentlemen were unanimously elected officers of the company to serve for one year and until their successors are elected and qualify :

President,  
Vice-President,  
Second Vice-President,  
Third Vice-President,  
Secretary,  
Treasurer,  
General Manager, } (if desired).  
Counsel,

8. (Insert for New Jersey, Nevada, and Delaware.)

It was ordered that the secretary take the oath of office and subscribe the written oath in the form presented at this meeting. The secretary thereupon took and subscribed the oath, and entered upon the discharge of his duties.

(For form of oath, see Appendix.)

9. It was ordered that the treasurer give a bond in the sum of        dollars in the form presented at this meeting, to be approved by the board, and submitted to them for their approval as to the sufficiency of the surety. The treasurer thereupon presented his bond, signed by himself as principal and        as surety, and same was approved and ordered filed.

(By-laws generally make the giving of a bond at discretion of board.)

10. (Where director resigns, use the following form for acceptance of resignation and election of his successor :)

The secretary presented the resignation of        as director of the company, and on motion duly made and seconded, same was accepted and ordered filed.

Mr.        was thereupon duly elected a director of the company to fill the vacancy caused by the resignation of Mr.       

(For form of resignation, see Appendix. Same in all States.)

11. Upon motion duly made and seconded, it was

*Resolved*, that the seal presented at this meeting, an impression of which is directed to be made in the margin of the minute-book, be and the same (Seal) hereby is adopted as the seal of the corporation.

12. Upon motion duly made and seconded, it was

*Resolved*, that the president and        be and they hereby are authorized to issue certificates of stock in the form submitted to this meeting :

(President and secretary must sign in South Dakota; in New York, Arizona, Nevada, West Virginia, and District of Columbia, president and secretary or treasurer; in Delaware and New Jersey, president and treasurer.)

13. Upon motion duly made and seconded, it was

*Resolved*, that the treasurer be and he hereby is authorized to open a bank account in behalf of this company with the        bank of        ; and be it further

*Resolved*, that until otherwise ordered, said bank be and it hereby is authorized to make payments from the funds of this company on deposit with it upon and according to the check of this company signed by its treasurer (and countersigned by the president if so provided in the by-laws.)

14. Messrs.        were appointed members of the executive committee, with all the powers given in the by-laws of this company.

15. Upon motion duly made and seconded, it was

*Resolved*, that an office of the company be established and maintained at the City of       , State of       , and that meetings of the board of directors from time to time may be held either at the (principal or registered) office in the State of       , or such other office in the City of        or elsewhere as the board of directors shall from time to time order.

16. (Where stock is issued for property, patent rights, etc., insert the following clause :)

Upon motion duly made and seconded, it was

*Resolved*, that this company accept the offer of        to sell to this company

## FORMS AND PRECEDENTS.

the property (patent rights, etc.), described in the agreement presented at this meeting, and the board of directors do hereby adjudge and declare that said property is of the fair value of \_\_\_\_\_ dollars, and that the same is necessary for the business of the company; and be it further

*Resolved*, that the agreement for the sale of said property (or assignment of patent rights, etc.), presented at this meeting, be and the same hereby is approved, and the president and secretary are hereby authorized and directed to execute said agreement in the name and on the behalf of this company, and to affix the corporate seal thereto; and be it further

*Resolved*, that the president and \_\_\_\_\_ be and they hereby are authorized and directed to issue certificates of full-paid capital stock of this company to the aggregate amount of \_\_\_\_\_ dollars, as provided in said agreement.

17. Upon motion duly made and seconded, it was

*Resolved*, that payment of the subscriptions for stock of the incorporators be deemed to be made by the property agreed to be sold to the company as set forth in the preceding resolution, it having been agreed between \_\_\_\_\_ and the incorporators that the stock to be issued to said \_\_\_\_\_ and his nominees under said agreement should include the stock subscribed by the incorporators.

The secretary presented the resignation of \_\_\_\_\_ as director of the company to take effect \_\_\_\_\_.

Mr. [redacted] was nominated to fill the vacancy caused by the resignation of Mr. [redacted], and upon motion duly made and seconded he was unanimously elected a director.

(This clause inserted where temporary or dummy directors resign at the first meeting.)

No further business was presented, and on motion the meeting adjourned.

**Approved :**

*, Chairman.*

## APPENDIX.

**WAIVER OF NOTICE. FIRST MEETING OF BOARD OF DIRECTORS.**

We, the undersigned, Directors of the \_\_\_\_\_ Company, a corporation under the laws of \_\_\_\_\_, hereby waive notice of the time and place of the first meeting of the Board of Directors, and of the business to be transacted at said meeting. We designate the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon as the time, and the office of the company in the City of \_\_\_\_\_ as the place of said meeting. The purpose of said meeting being the election of officers, the authorization of the issue of stock of the company, the authorization of the purchase of property necessary for the business of the company, and the transaction of such other business as the Board may deem proper.

**Dated**

### SECRETARY'S OATH.

State of \_\_\_\_\_ } ss.  
County of \_\_\_\_\_ }

\_\_\_\_\_, Secretary of the \_\_\_\_\_ Company, being by me duly sworn,  
upon his oath does promise and swear that he will faithfully discharge the duties of  
secretary of the aforesaid company to the best of his skill and ability.

Subscribed and sworn to before me this            day of            , 190 .

Subscribed and sworn to before me this                      day of  
*Notary Public.*

### DIRECTORS' RESIGNATION.

I hereby tender my resignation as Director of the effect when accepted by said company.

**Company, to take**

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### COMPOSITE FORM OF BY-LAWS

For New York, New Jersey, South Dakota, Delaware, Arizona, West Virginia, Nevada, District of Columbia, etc.

(In the District of Columbia in all cases use "Trustee" for "Director" and "District" for "State.")

#### ARTICLE I. OFFICES.

Sec. 1. The registered (or principal) office shall be in the city of \_\_\_\_\_, State of \_\_\_\_\_. The agent in charge of said office, upon whom process against the company may be served, is \_\_\_\_\_.

Sec. 2. The company may also have an office in the city of \_\_\_\_\_, State of \_\_\_\_\_, and also have offices in such other places as the board of directors may appoint.

#### ARTICLE II. MEETINGS OF STOCKHOLDERS.

Sec. 1. The annual meetings of the stockholders of this corporation shall be held at the registered (or principal or business) office of the corporation in the city of \_\_\_\_\_, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ in each year at \_\_\_\_\_ o'clock \_\_\_\_\_ M., for the election of directors and such other business as may properly come before the meeting. Notice of the time, place, and object of such meeting shall be given (by publication thereof in a newspaper published in the county where election is held at least once in each week for two successive weeks immediately preceding such meeting, or Note A) by mailing at least \_\_\_\_\_ days previous to such meeting, postage prepaid, a copy of such notice addressed to each stockholder at his residence or place of business as the same shall appear on the books of the corporation. No business other than that stated in such notice shall be transacted at such meeting without the unanimous consent of all the stockholders present thereat in person or by proxy.

(NOTE A — for New York and South Dakota.) For District of Columbia, in absence of written consent of all the stockholders, meetings for the election of trustees must be called by publishing notice thereof not less than thirty days before the date of the meeting in some newspaper printed and published in the district.

NOTE (place of meeting). In South Dakota and Arizona meetings should be held at the business office as provided in the articles of incorporation. In Delaware the first meeting of stockholders is held within the State; subsequent meetings are held in the place fixed by the by-laws. In New York and New Jersey within the State, and in District of Columbia within the district. In Nevada and West Virginia meetings may be held outside if by-laws so provide.

Sec. 2. Special meeting of the stockholders shall be held at the registered (or principal) office of the company (or at the business office of the company in \_\_\_\_\_, Note A) in \_\_\_\_\_, and may be called at any time by a majority of the directors or by a call signed by stockholders holding one-third of the voting stock of the company. Notice of every special meeting stating the time, place, and object thereof shall be given by mailing, postage prepaid, at least \_\_\_\_\_ days before such meeting a copy of such notice, addressed to each stockholder at his post-office address as the same appears on the books of the company.

Note A inserted where meetings may be held outside of the State. See Note, Sec. 1.

Sec. 3. At all meetings of stockholders there shall be present, either in person or by proxy, stockholders owning a majority of the outstanding capital stock of the corporation, in order to constitute a quorum, except ("at special elections of directors where the members attending shall constitute a quorum and except," Note A), where otherwise provided by statute or by the certificate of incorporation.

Note A inserted for New York only.

Sec. 4. At all meetings of stockholders only such persons shall be entitled to

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vote in person or by proxy who shall appear as stockholders on the transfer books of the corporation for (Note A) days immediately preceding such meeting. At any regular or special meeting each stockholder shall be entitled to one vote for every share of stock held in his name.

Where cumulative voting for directors has been provided for, insert the following provision:

"In all elections for directors each stockholder may cumulate his shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or distribute them on the same principle among as many candidates as he shall think fit."

NOTE A. In New York transfers must be allowed up to within ten days of election. In New Jersey, Nevada, and Delaware up to within twenty days. In West Virginia no definite time is fixed.

NOTE B. Cumulative voting if desired should always be provided for in the certificate of incorporation. In West Virginia cumulative voting for directors is required by statute and must appear in by-laws. In Nevada stockholders have right of voting cumulatively unless articles of incorporation provide otherwise. Statutes of District of Columbia do not permit of cumulative voting.

Sec. 5 (for New Jersey and Nevada). At each meeting of the stockholders a full, true, and complete list, in alphabetical order, of all the stockholders entitled to vote at such meeting, with the number of shares held by each, certified by the secretary or the treasurer, shall be furnished. At least ten days before each annual meeting, a like list, containing also the residences of the stockholders, shall be filed in the registered office as required by statute.

Sec. 6 (all States except New York). At all elections of directors the polls shall be opened and closed, the proxies shall be received and taken in charge, all questions touching the qualification of voters and the validity of proxies, and the acceptance or rejection of votes shall be decided and all ballots shall be received and counted by two inspectors. Such inspectors shall be appointed by the presiding officer of the meeting, shall be sworn to faithfully perform their duties, and shall, in writing, certify to the returns. No candidate for election as director shall be appointed or act as inspector.

Sec. 7 (for New York only). Two inspectors of election shall be elected at each annual meeting of the stockholders to conduct the election of directors for the ensuing year. Such inspectors shall be sworn to the faithful discharge of their duty, and in event of the absence, inability, or refusal of either to serve, the meeting may appoint an inspector in his place.

Sec. 8. At the annual meetings of stockholders the following shall be the order of business: 1. Calling of roll; 2. Proof of notice of meeting; 3. Report of president; 4. Report of treasurer; 5. Report of secretary; 6. Report of committees; 7. Appointment of inspectors of election of directors; 8. Election of directors; 9. Miscellaneous business.

Sec. 9. At all meetings of stockholders all questions, except the question of an amendment to the by-laws and the election of directors, and all such other questions the manner of deciding which is especially regulated by statute, shall be determined by a majority vote of the stockholders present in person or by proxy; provided, however, that any qualified voter may demand a stock vote, and in that case such stock vote shall immediately be taken, and each stockholder present in person or by proxy, shall be entitled to one vote for each share of stock owned by him as provided in section 4. All voting shall be *viva voce*, except that a stock vote shall be by ballot, each of which shall state the name of the stockholder voting and the number of shares owned by him, and in addition if such ballot be cast by a proxy, it shall also state the name of such proxy.

## ARTICLE III. DIRECTORS.

Sec. 1. The directors of this corporation, of whom at least (A) shall be a resident of \_\_\_\_\_, shall be elected by ballot, for the term of one year, at the annual meeting of stockholders, except as hereinafter provided for filling vacancies.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

The directors shall be chosen by a plurality vote of the stockholders, voting either in person or by proxy at each annual election. The directors shall each hold at least (B) shares of stock.

NOTE A. In New York, New Jersey, and Delaware at least one director shall be a resident of the State; in District of Columbia, a majority of trustees shall be citizens; in Arizona, Nevada, and South Dakota omit provision as to residence; in West Virginia directors need not be residents of the State if by-laws so provide. In West Virginia number of directors must be set out in by-laws.

NOTE B. In New York, New Jersey, Arizona, West Virginia, District of Columbia, South Dakota, and Nevada each director should ordinarily hold at least one share; in Delaware three shares.

Sec. 2. Vacancies in the board of directors occurring during the year shall be filled for the unexpired term by a majority vote of the remaining directors at any special meeting called for that purpose or any regular meeting of the board.

Sec. 3. In case the entire board of directors shall die or resign, any stockholder may call a special meeting of stockholders in the same manner that the president may call such meeting, and directors for the unexpired term may be elected at such special meeting in the manner provided for their election at annual meetings.

Sec. 4. The board of directors may adopt such rules and regulations for the conduct of their meetings and management of the affairs of the corporation as they deem proper, not inconsistent with the laws of the State of \_\_\_\_\_ or these by-laws.

Sec. 5. The board of directors shall meet on the \_\_\_\_\_ day of every month or whenever called together by the president upon due notice given to each director. On the written request of any director the secretary shall call a special meeting of the board. At such meeting a majority shall constitute a quorum for the transaction of business.

Sec. 6. Meetings of the board of directors of this company or of the executive committee appointed thereby, may be held either at the principal office of the company at \_\_\_\_\_, county of \_\_\_\_\_ and State of \_\_\_\_\_, or at the business office of the company to be opened and maintained by it at the city of \_\_\_\_\_, State of \_\_\_\_\_.

## ARTICLE IV. EXECUTIVE COMMITTEE AND OTHER COMMITTEES.

Sec. 1. The board of directors may appoint \_\_\_\_\_ of their own number to act as an executive committee to serve during the life of the board that appointed it.

Sec. 2. The executive committee shall have entire control and supervision of all of the property and business affairs of the corporation, and shall have and exercise all the powers and privileges which are possessed and exercised by the board of directors.

Sec. 3. All action by the executive committee shall be reported to the board at its meeting next succeeding, and such action shall be subject to revision or alteration by the board provided that no rights of third parties shall be affected by any such revision or alteration.

Sec. 4. From time to time the board may appoint any other committee or committees for any purpose or purposes who shall have such powers as shall be specified in the resolution of appointment.

(The powers of the executive committee depend upon the statutes, and therefore the above will vary with reference to particular powers that may be delegated by the board to committees.)

## ARTICLE V. OFFICERS.

Sec. 1. The board of directors immediately after the annual meeting shall choose one of their number by a majority vote to be president, and it shall appoint

## FORMS AND PRECEDENTS.

a vice-president, secretary, and treasurer and such subordinate officers as it shall deem necessary. Each of such officers shall serve for the term of one year or until the next annual election. Vacancies occurring among the officers may be filled by the board of directors for the unexpired term.

Sec. 2. The *president* shall preside at all meetings of the board of directors, and shall act as chairman at, and call to order all meetings of the stockholders. He shall sign all certificates of stock (and countersign all checks, bills, and notes drawn by the treasurer). He shall submit a complete report of the operations and conditions of the company for the year to the directors at their regular meeting in and to the stockholders at their regular meeting in of each year, and from time to time shall report to the directors all matters within his knowledge which the interests of the company may require to be brought to their notice; he shall be an *ex officio* member of all standing committees, and shall have the general powers and duties of supervision and management usually vested in the office of a president of a corporation.

Sec. 3. The first, second, and third *vice-presidents* shall, in the absence or incapacity of the president, perform the duties of that officer in succession according to their rank unless the board shall otherwise determine.

Sec. 4. The *treasurer* shall have the custody of all the funds and securities of the corporation, and deposit the same in the name of the corporation in such bank or banks as the directors may elect; he shall sign all checks, drafts, notes, and orders for the payment of money (which shall be countersigned by the president) and he shall pay out and dispose of the same under the direction of the president. He shall at all reasonable times exhibit his books and accounts to any director or stockholder of the company upon application at the office of the company during business hours. (He shall sign all certificates of stock signed by the president, Note A); he shall give such bond for the faithful performance of his duties as the board of directors may require.

NOTE A. The president and secretary must sign in South Dakota. In New York, Arizona, Nevada, West Virginia, and District of Columbia, ordinarily the president and secretary or treasurer. In New Jersey and Delaware, the president and treasurer.

Sec. 5. The *secretary* shall keep the minutes of proceedings of the board of directors and the minutes of the meetings of stockholders; he shall attend to the giving and serving of all notices of the company; he shall affix the seal of the company to all certificates of stock; he shall have charge of the certificate book and such other books and papers as the board may direct; he shall attend to such correspondence as may be assigned to him, and perform all the duties incidental to his office. He shall also keep a stock book containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares held by them respectively, the time when they respectively became owners thereof, and the amount paid thereon, and such book shall be open for inspection of stockholders during the usual business hours (in New York at least three hours) at the office of the company. ("He shall be sworn to the faithful discharge of his duties," Note A.) ("He shall sign all certificates of stock signed by the president." See section 4, Note A.)

NOTE A. Necessary in Delaware, Nevada, and New Jersey, and usually provided.

(In the District of Columbia the following should be added to the powers of the secretary:)

If at any time he shall not reside within the District of Columbia he shall see that all proper transfers shall be made in the stock book of the company kept at the registered office of the company in the District of Columbia.

(The following section should be inserted where counsel is provided for:)

Sec. 6. The *counsel* of the company shall prepare all such contracts and agreements required in the business of the company as may be referred to him by its officials; he shall inspect and pass upon all such instruments as may be presented to the company and be of sufficient importance to justify such examination. He

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shall also advise with the officers of the company in such legal matters pertaining to the affairs of the company as may require his consideration.

### ARTICLE VI. CAPITAL STOCK.

Sec. 1. Subscriptions to the capital stock must be paid to the treasurer at such times and in such instalments as the board of directors may by resolution require. Any failure to pay any instalment when required to be paid by the board of directors shall work a forfeiture of such share of stock in arrears.

NOTE. If preferred stock is provided for, the provisions and conditions of its issue should be set forth here.

If stock is to be made full-paid in the beginning, in consideration of the transfer of property, etc., section 1 may be omitted.

Sec. 2. Certificates of stock shall be numbered and registered in the order they are issued, and shall be signed by the president and by the treasurer ("Secretary," see Art. V. sec. 4, Note A), and the seal of the corporation shall be affixed thereto. All certificates shall be bound in a book, and shall be issued in consecutive order therefrom, and in the margin thereof shall be entered the name and address of the person owning the shares therein represented, the number of shares and the date of issuing thereof. All certificates exchanged or returned to the corporation shall be marked cancelled, with the date of cancellation by the secretary, and shall be immediately pasted in the certificate book opposite the memorandum of its issue.

Sec. 3. Transfers of shares shall only be made upon the books of the corporation by the holder in person or by power of attorney duly executed and acknowledged and filed with the secretary of the corporation, and on the surrender of the certificate or certificates of such shares.

Sec. 4. The board may appoint a transfer agent and a registrar of transfers, and may require all stock certificates to bear the signature of either or both.

Sec. 5. Whenever the capital stock of the company is increased, each *bona fide* owner of its stock shall be entitled to purchase, at the par value thereof, an amount of stock in proportion to the number of shares of stock he owns in the corporation at the time of such increase.

### ARTICLE VII. DIVIDENDS.

Sec. 1. Dividends shall be declared and paid out of the surplus profits of the corporation as often and at such times as the board may determine. No dividend shall be declared or paid that tends to curtail the effective operation of the business.

### ARTICLE VIII. SEAL.

Sec. 1. The seal of the corporation shall be in the form of a circle, and shall bear the name of the corporation and the year of its incorporation, and the words "corporate seal" (name of State).

### ARTICLE IX. AMENDMENTS.

Sec. 1. The board of directors shall have power to make, amend, or repeal the by-laws of the company by the vote of a majority of all of the directors at any regular or special meeting of the board provided that notice of intention to (make,) amend, or repeal the by-laws in whole or in part at such meeting shall have been previously given to each member of the board, or without any such notice by a vote of two-thirds of all of the directors (Note A).

Sec. 2. All of the by-laws shall be subject to amendment, alteration, and repeal at any annual meeting of stockholders or at any special meeting called for that purpose by the affirmative vote of a majority of stock (Note B).

Sec. 3. In all cases, whether amended by the board of directors or by the stockholders, a copy of such amended by-law shall be sent to each stockholder within ten days after the adoption of the same.

NOTE A. In West Virginia, board of directors may not be given such power

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to "make, etc." by-laws. Certificate of incorporation should generally provide for amendment by directors where this power is desired.

NOTE B. What constitutes a valid vote depends upon the statutes of each State.

## MISCELLANEOUS FORMS AND PRECEDENTS.

### SUBSCRIPTION AGREEMENT BEFORE ORGANIZATION.

*Whereas*, the organization is contemplated of a corporation under the laws of the State of \_\_\_\_\_, to be known as the \_\_\_\_\_, or by such other name as may be selected, with a capital stock of not less than \$ \_\_\_\_\_ for the purpose of \_\_\_\_\_ and it is desired by the undersigned to become stockholders in said corporation.

*Now, therefore,*

\_\_\_\_\_ the undersigned, do hereby promise and agree to and with each other all \_\_\_\_\_ in consideration of the mutual promises and agreements herein contained, that they will pay to the Treasurer of said corporation as soon as he shall have been elected to that office, on demand, the sum of \_\_\_\_\_ dollars, being the subscription price of \_\_\_\_\_ shares of the capital stock of the said corporation, or such part thereof as may be called for. The stock thus paid for to be delivered at the earliest possible moment after the organization of the company, and meanwhile proper receipts to be issued to the undersigned.

We hereby further agree in consideration as aforesaid, that our several subscriptions to the capital stock of said \_\_\_\_\_ Company to be formed, are hereby made for the use and benefit of said \_\_\_\_\_ Company, and that when said \_\_\_\_\_ is duly formed and organized, that the said subscriptions hereby made may be enforced by it either at law or otherwise as the Board of Directors of said company may hereafter determine.

Names.

Residences.

### PROXY

#### For Meeting of Incorporators and Subscribers.

\_\_\_\_\_, one of the incorporators of the \_\_\_\_\_ Company, and a subscriber to \_\_\_\_\_ shares of the stock thereof, hereby appoints \_\_\_\_\_ as proxy with full power of substitution and revocation to vote for and on behalf of the undersigned at the organization meeting of the corporation to be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_\_, or at any adjournment thereof.

*Witness*, my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_\_. (L. S.)

In the presence of:

### PROXY AND WAIVER OF NOTICE (Combined).

*Know all Men by these Presents*, That I, the undersigned, being the owner of \_\_\_\_\_ shares of the capital stock of the \_\_\_\_\_ Company, a corporation organized and existing under the laws of the State of \_\_\_\_\_, do hereby constitute and appoint \_\_\_\_\_ my true and lawful attorney, for me and in my name and stead, to vote upon the stock owned by me or standing in my name, as my proxy at a special (or annual) meeting of the stockholders of said company, to be held at the office of the company in the City of \_\_\_\_\_, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_\_ (hereby waiving all statutory requirements as to notice of said meeting and publication thereof), and on such other day or days as the meeting may be thereafter held by adjourn-



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ment or otherwise, according to the number of votes I am now or may then be entitled to cast, hereby granting the said attorney full power and authority to act for me and in my name at said meeting or meetings in voting for the election of directors of the company, or in the transaction of such other business as may properly come before the meeting, as fully as I could do if personally present, hereby granting the said attorney full power of substitution and revocation, and hereby ratifying and confirming all that my said attorney or substitute may do in my name, place, and stead.

*In Witness Whereof*, I have hereunto set my hand and seal this                      day of                      , 190 .

Witness:

### TRANSFER OF SUBSCRIPTION.

For value received, the undersigned does hereby sell, assign, transfer, and set over unto                      all his right, title, and interest as an incorporator of and as a subscriber to the capital stock of the                      Company to the extent of                      shares of the capital stock thereto.

I hereby request and direct the proper officers of said Company to issue a certificate for said shares to the aforesaid assignee or his assigns.

*In Witness Whereof*, I have hereunto set my hand and seal this                      day of                      , 190 .

Dated

. (L. S.)

Witness:

### FORM OF LETTER ADDRESSED TO CORPORATION OFFERING TO TRANSFER PROPERTY IN EXCHANGE FOR CAPITAL STOCK OF A CORPORATION.

To the Stockholders of the                      Company:

I am the owner in fee of the following described real estate (or, in case of personal property, the clause should read, "the owner of the following described personal property), to wit: (here insert description of property).

I hereby offer to transfer to you the property above described within days from date hereof, in consideration of the assignment to me within the said period of time, of                      shares of the capital stock of your Company. The offer herein contained is made subject to acceptance by your corporation within days from the date hereof. If the offer is not accepted within said time, the same shall forthwith become null and void.

Respectfully Submitted.

### AGREEMENT FOR THE SALE OF REAL OR PERSONAL PROPERTY TO A CORPORATION IN EXCHANGE FOR ITS CAPITAL STOCK.

This agreement made                      this                      day of                      , 190 , by and between                      of the City of                      , County of                      , State of                      , party of the first part, and the                      Company, a corporation organized and existing under and by virtue of the laws of the State of                      , party of the second part.

*Witness*, For and in consideration of the sum of \$1.00 paid by each of said parties of the first and second parts to each, the receipt whereof is hereby acknowledged, and in further consideration of the mutual covenants and agreements herein contained, it is hereby agreed by and between the said parties of this agreement as follows:

*First*. The said party of the first part hereby agrees, within                      days from the date of this agreement, to sell, convey, assign, transfer, and deliver to the said party of the second part the following described real estate (or personal property), to wit:

## FORMS AND PRECEDENTS.

(Here insert description of the property to be sold, conveyed, transferred, assigned, and delivered.)

*Second.* Said party of the first part hereby warrants that it is the owner in fee of said real estate above described (or, in case of personal property, that it is the owner of the personal property above described) all of which is hereby warranted to be free and clear from all liens, charges, incumbrances, taxes, and assessments whatsoever.

*Third.* The said party of the second part hereby agrees that forthwith, upon due conveyance to it (in case of personal property upon the due transfer, assignment, or delivery) of said real estate by said party of the first part, it will, in consideration therefor, assign, transfer, and deliver to said party of the first part shares of the common stock of the \_\_\_\_\_ Company (party of the second part hereto) of the par value of \_\_\_\_\_ dollars per share, aggregating \$ \_\_\_\_\_ in amount.

*In Witness Whereof*, the said parties of the first and second parts have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

By \_\_\_\_\_  
Co. SEAL.  
      SEAL.  
      *Pres.*

Attest: \_\_\_\_\_ *Sec'y.*

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

\_\_\_\_\_, *Notary Public*,  
Co.  
State of \_\_\_\_\_.

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On the \_\_\_\_\_ day in the year \_\_\_\_\_ before me personally came \_\_\_\_\_, to me known, who being by me duly sworn did depose and say that he resided in \_\_\_\_\_; that he is the President of \_\_\_\_\_ Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

\_\_\_\_\_, *Notary Public*,  
County,  
State of \_\_\_\_\_.

## FORM OF TRUST AGREEMENT.

(This agreement will be found very convenient where it is desired to get stock back into the treasury as full-paid and non-assessable stock, subject to sale below par if desired.)

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 190 , by and between \_\_\_\_\_ of the City of \_\_\_\_\_, State of \_\_\_\_\_, party of the first part, and the \_\_\_\_\_ Company, a corporation organized and existing under the laws of the State of \_\_\_\_\_, party of the second part, witnesseth as follows:

*First.* That in consideration of the mutual covenants and agreements herein contained, said party of the first part does hereby assign, transfer, and set over unto said party of the second part \_\_\_\_\_ shares of the capital stock of the \_\_\_\_\_ Company, of the par value of \_\_\_\_\_ dollars per share to be held by said party of the second part in trust, and to be disposed of under the direction of the Board of Directors of said party of the second part for the benefit

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

of the stockholders of said party of the second part with a view to securing the necessary funds with which to carry on the business of said Company, and to provide a working capital therefor.

*Second.* The said party of the second part hereby accepts the assignment and transfer of said \_\_\_\_\_ shares of the capital stock of said Company to be held by and disposed of by it for the purposes above stated.

*Third.* Said party of the second part further covenants and agrees that it will at all times hold and dispose of, at such prices and under such terms and conditions as its Board of Directors may prescribe, said \_\_\_\_\_ shares of said capital stock of said \_\_\_\_\_ Company, with a view to securing adequate and sufficient capital with which to carry out the purposes for which said Company was formed.

*In Witness Whereof,* said parties of the first and second parts have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

By \_\_\_\_\_,  
\_\_\_\_\_, *Party of the first part.*  
\_\_\_\_\_, *Company.*  
\_\_\_\_\_, *President,*  
\_\_\_\_\_, *Party of the second part.*

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 190 , before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

\_\_\_\_\_, *Notary Public.*  
\_\_\_\_\_, *County.*

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 190 , before me personally came \_\_\_\_\_, who being by me duly sworn did depose and say: that he resided in the City of \_\_\_\_\_; that he was the President of the \_\_\_\_\_ Company, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to such instrument was such corporate seal; that it was so affixed by order of the Board of Directors, and that he signed his name thereto by like order.

\_\_\_\_\_, *Notary Public,*  
\_\_\_\_\_, *County.*

## CERTIFICATE OF COMMON STOCK.

(Number.)

(Shares.)

Incorporated under the laws of \_\_\_\_\_.

\_\_\_\_\_  
Name of Corporation.

\_\_\_\_\_  
Capital Stock, \$

*This certifies that* \_\_\_\_\_ *is the owner of* \_\_\_\_\_ *shares of the capital stock of the* \_\_\_\_\_ *Company, transferable only on the books of the corporation in person or by attorney upon surrender of this certificate.*

*In Witness Whereof,* the duly authorized officers of this corporation have hereunto subscribed their names and caused the corporate seal to be hereto affixed, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 190 .

(CORPORATE  
SEAL.)

\_\_\_\_\_  
Shares \_\_\_\_\_ each.

FORMS AND PRECEDENTS.

CERTIFICATE OF PREFERRED STOCK.

(Number.)

(Shares.)

Incorporated under the laws of \_\_\_\_\_.

Name of Corporation.  
\_\_\_\_\_

Capital Stock, \$ \_\_\_\_\_.

Common Stock, \$ \_\_\_\_\_; Preferred Stock, \$ \_\_\_\_\_.

*This is to certify that* \_\_\_\_\_ is entitled to \_\_\_\_\_ fully paid and non-assessable shares of the par value of \$ \_\_\_\_\_ each of the preferred capital stock of the \_\_\_\_\_ Company, transferable only on the books of the corporation in person or by proxy, or by attorney upon the surrender of this certificate.

The holders of preferred stock are entitled to receive, and the Company is bound to pay out of any and all surplus profits whenever ascertained, (non) cumulative dividends thereon at the rate of and not exceeding \_\_\_\_\_ per cent per annum, payable in quarterly, yearly, or half-yearly instalments as the Board of Directors may direct, before any dividends shall be declared or paid on the common stock.

The preferred stock is subject to redemption at par on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, or at any other period thereafter that the Board of Directors may select. (The holders of preferred stock shall not be entitled to any voting powers in the corporation.)

*In Witness Whereof*, the duly authorized officers of the corporation have hereto subscribed their names and caused the corporate seal to be hereto affixed this day of \_\_\_\_\_, 190 \_\_\_\_\_.  
(SEAL.) \_\_\_\_\_

CERTIFICATE OF INSPECTOR OF ELECTION.

The undersigned, having been duly appointed Inspector of Election of directors of the \_\_\_\_\_ Company, pursuant to the statute in such case made and provided at the annual meeting of the stockholders of said corporation held for that purpose on the \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, at the office of the company in the City of \_\_\_\_\_, do hereby certify that at such election there were present and voting \_\_\_\_\_ shares of the stock of said corporation with the following result, to wit:

The said persons above named having received a majority of all the votes cast at such election are hereby declared by us to have been elected directors by a majority of the whole number of \_\_\_\_\_ shares outstanding in said company.

RESOLUTION OF DIRECTORS AUTHORIZING THE  
CONTRACTION OF A SPECIFIC DEBT.

*Whereas*, it appears to this board that \_\_\_\_\_ dollars are necessary with which to enable the company to meet its obligations now due and owing; and

*Whereas*, there is no money in the treasury of the company at the present time with which to meet said obligations, Now, therefore,

*Be it resolved*, that the proper officers of this corporation be and they hereby are authorized to contract a loan for this company to the amount of \_\_\_\_\_

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

dollars, and to give therefor a promissory note of this company for said amount, same to bear interest at the rate of \_\_\_\_\_ per cent per annum until paid, and to become due \_\_\_\_\_ months after date thereof, and the said officers are hereby authorized to secure payment of said note by giving a mortgage on such real estate of the company as may be required or as may be expedient.

I, \_\_\_\_\_, Secretary of the \_\_\_\_\_ Company, a corporation organized and existing under the laws of the State of \_\_\_\_\_, do hereby certify that the foregoing is a true and correct copy of the resolution of the Board of Directors of said corporation, duly adopted at the regular meeting of said Board of Directors held at the office of said company on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, and that the same is entered as such in the minute book of said Board of Directors.

Witness my hand and the seal of said corporation the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.

(SEAL.)

## WAIVER OF NOTICE OF ASSESSMENT.

We, the undersigned, hereby waive notice of the time and place of the payment of our respective subscriptions to the capital stock of the \_\_\_\_\_ Company, and also waive all requirements of law as to notice of assessment and payment thereof.

And we hereby agree to pay the same to the Treasurer of said Company in such amounts and in such time or times as the Board of Directors may require.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## CERTIFICATE OF THE SECRETARY OF A CORPORATION TO THE PASSAGE OF A RESOLUTION.

I, \_\_\_\_\_, Secretary of the \_\_\_\_\_ Company, hereby certify that the Resolution above set forth is a full and true copy of the same as passed by the Board of Directors (or by the stockholders) of said Company at \_\_\_\_\_ meeting of said Board (or of the stockholders) held on the \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_, as taken from and compared with the original resolution as recorded in the minute book of the Company.

Witness my hand and the seal of the Company this \_\_\_\_\_ day of \_\_\_\_\_, 190\_\_\_\_.

Secretary.

(CORPORATE  
SEAL.)

## APPOINTMENT OF AGENT.

### ARIZONA FORM.

The \_\_\_\_\_ Company.

KNOW ALL MEN BY THESE PRESENTS: That the \_\_\_\_\_ Company, a corporation organized under the laws of Arizona, has, at a regularly held meeting of the \_\_\_\_\_ of the said Corporation, by resolution properly carried and spread upon the minutes of said meeting, authorized and empowered and does by these presents authorize and empower \_\_\_\_\_ of Phoenix, Arizona, for and in behalf of said Company, to accept and acknowledge service of, and upon whom may be served all notices or processes or summons in any action, suit, or proceeding that may be had or brought against the said Company in any of the courts of Arizona, such service of process or notice, or the acceptance thereof by said agent endorsed thereon, to

# FORMS AND PRECEDENTS.

have the same force as if served personally upon the Corporation or the President and Secretary thereof, the said Corporation hereby revoking any power of attorney or appointment of Agent heretofore made by it for the purpose designated above.

Witness the signature of the President and Secretary of said Company this day of , 190 .

, Secretary. , President.

## APPOINTMENT OF AGENT.

### WEST VIRGINIA FORM.

KNOW ALL MEN BY THESE PRESENTS:

That , a corporation incorporated and organized under the laws of the State of West Virginia, and in conformity therewith, hath made, constituted, and appointed, and by these presents doth make, constitute, and appoint of , in the County of , State of , its true and lawful attorney, for it and in its name, place, and stead to accept service on behalf of said corporation, and upon whom service may be had of any process or notice, and make such return for and on behalf of such corporation of its property for taxation to the assessor of the county or district wherein its business is carried on as is required by the forty-first section of the twenty-ninth chapter of the Code of West Virginia, and to list the property of said corporation for taxation in any other manner required by the laws of said State, giving the said attorney full power to do everything whatsoever requisite and necessary to be done in the premises as fully as such corporation could do itself, and hereby ratifying and confirming all that the said attorney shall lawfully do or cause to be done by virtue hereof.

In Witness Whereof, the said hath signed these presents by its President and caused the corporate seal of said corporation to be hereunto affixed, this day of , 190 .

(SEAL OF CORPORATION.)

By , President.

State of ,  
County of , to wit:

I, , a Notary Public in and for the County and State aforesaid, do certify that personally appeared before me in my said county, and being by me duly sworn, did depose and say that he is the President of the Corporation described in writing above, bearing date the day of , 190 , authorized by said Corporation to execute and acknowledge deeds and other writings of said Corporation, and that the seal affixed to said writing is the corporate seal of said Corporation, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority duly given. And the said acknowledged the said writing to be the act and deed of said Corporation.

Given under my hand and official seal, this day of , 190 . , Notary Public.

(SEAL.)

State of West Virginia, }  
County of , } to wit:

I, , Clerk of the County Court of said County, do hereby certify that the foregoing Power of Attorney was this day presented to me in my said office, and together with the certificate thereunto annexed was duly admitted to record therein.

Given under my hand, this day of , 190 .  
Clerk of said County Court.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### NOTICE OF ANNUAL MEETING.

Notice is hereby given that the annual meeting of the \_\_\_\_\_ Company will be held at the office of the Company, No. \_\_\_\_\_ Street, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 190 , at \_\_\_\_\_ o'clock, M., for the purpose of electing a full Board of Directors for the ensuing year (and \_\_\_\_\_ inspectors of election if they are required by law), and for the transaction of such other business as may properly come before said meeting, and polls will remain open (here state the number of hours).

In accordance with the laws of the State of \_\_\_\_\_ no stock can be voted on, which has been transferred on the books of the Company within \_\_\_\_\_ days next preceding the election.

\_\_\_\_\_, *Secretary.*

### NOTICE OF MEETING TO AMEND CHARTER.

Notice is hereby given that a meeting of the stockholders of the \_\_\_\_\_ Company, a corporation organized and existing under the laws of the State of \_\_\_\_\_, will be held at its principal place of business, at No. \_\_\_\_\_ Street, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 190 , at \_\_\_\_\_ o'clock, M., for the purpose of considering the adoption of a resolution to (here insert the particular amendment to be presented to the stockholders), and the transaction of such other business as may properly come before said meeting.

By order of the Board of Directors.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

\_\_\_\_\_, *President.*

Attest : .

\_\_\_\_\_, *Secretary.*

### COMBINED FORM OF WAIVER OF NOTICE AND WAIVER OF PUBLICATION OF NOTICE OF SPECIAL STOCKHOLDERS' MEETING.

The undersigned, being all of the stockholders of the \_\_\_\_\_ Company, a corporation created and organized under the laws of the State of \_\_\_\_\_ by virtue of a charter issued by the Secretary of State of said State, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 190 , hereby assent and agree that a special meeting of the stockholders of said corporation be held at the office of the Company, No. \_\_\_\_\_ Street, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 190 , at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon therein, for the purpose of (here insert nature of business to be transacted), and the transaction of such other business as may come before the meeting. We do hereby waive notice and publication of notice of such meeting, and agree that any business transacted at said meeting be valid in effect as though held after notice duly given and published.

Witness our signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 190 .  
(Signatures.)

### FORM FOR RESOLUTION RELATIVE TO OPENING DEPOSIT WITH BANK.

*Resolved*, that the \_\_\_\_\_ Bank be and the same hereby is designated as a depository of the funds of this Company, and that \_\_\_\_\_, the Treasurer of said Company, be and he hereby is authorized from time to time for and on behalf of this Company to make or sign checks, drafts, notes, obligations, agreements, or other instruments; to endorse checks, drafts, or other instruments; to accept drafts or to procure loans, discounts or re-discounts, or advances; to do all acts incidental to any of the above matters; and to pay, adjust, or secure any transaction, matter, or liability, and to do all acts therein, to pay all sums due or to become due; to accept and receive notices and demands, and generally to do all acts and things with reference to any transaction in the name of or on behalf of this Company with the

## FORMS AND PRECEDENTS.

bank of the City of \_\_\_\_\_, or in carrying on its business relations therewith, which any of said persons may see fit; *Providing, however*, that said Treasurer shall not make the total liabilities created by him hereunder to exceed at one time the sum of \_\_\_\_\_ dollars.

*This Resolution is to continue in force until formally rescinded, and filing of due notice thereof with said \_\_\_\_\_ Bank.*

### RESOLUTION APPOINTING AGENT.

*Resolved*, that the President of the \_\_\_\_\_ Company be and he hereby is authorized and directed to execute in the name of and on behalf of said corporation the statement required to be filed by foreign corporations under the provisions of the statutes of the State of \_\_\_\_\_ in such case made and provided, and attach the seal of the corporation thereto, and in such statement to designate a resident of the State of \_\_\_\_\_, residing and having his office at No. \_\_\_\_\_

Street, in the City of \_\_\_\_\_, State of \_\_\_\_\_, as the person upon whom process against the corporation may be served within the State of \_\_\_\_\_, and further to do all acts and things necessary to comply with the statutes of said State in such case made and provided.

### RESOLUTION DECREASING CAPITAL STOCK.

*Resolved*, that the authorized capital stock of \_\_\_\_\_ Company be increased (or reduced) from \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each, to \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each, so that the authorized capital stock of said corporation shall hereafter be \_\_\_\_\_ dollars instead of \_\_\_\_\_ dollars as heretofore.

### RESOLUTION CHANGING PAR VALUE OF SHARES WITHOUT CHANGING AUTHORIZED CAPITAL STOCK.

*Resolved*, that the number of shares and the par value of the shares of the \_\_\_\_\_ Company be changed from \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each, to \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each, so that the authorized capital stock shall be as heretofore, \_\_\_\_\_ dollars.

### RESOLUTION CHANGING NAME.

*Resolved*, that the name of this corporation be changed from \_\_\_\_\_ Company, its present name, to \_\_\_\_\_ Company, by which latter name it shall be hereafter known.

### RESOLUTION FOR CHANGE OF PRINCIPAL PLACE OF BUSINESS.

*Resolved*, that the location of the principal place of business of this corporation be changed from \_\_\_\_\_, in the County of \_\_\_\_\_ and State of \_\_\_\_\_, to \_\_\_\_\_, in the County of \_\_\_\_\_ and State of \_\_\_\_\_.

### RESOLUTION TO AUTHORIZE THE HOLDING OF MORE THAN 100,000 ACRES OF LAND IN WEST VIRGINIA.

*Resolved*, that this corporation desires to hold not exceeding \_\_\_\_\_ acres of land in West Virginia, which is \_\_\_\_\_ acres in excess of the number it is now authorized to hold in said State.

### FORM FOR RESOLUTION DECLARING A DIVIDEND.

*Whereas*, there is now in the Treasury of this Company surplus profits arising from the carrying on of the business of the Company sufficient to justify the declaration of a dividend of \_\_\_\_\_ per cent upon all stock issued; Now, therefore, be it

*Resolved*, that a dividend of \_\_\_\_\_ per cent on the stock of the Company



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

issued and outstanding be and the same hereby is declared out of the surplus earnings of the corporation already accrued or hereafter to accrue up to and including the            day of           , 190 , to which date this dividend period extends, payable on the            day of            to the stockholders entitled thereto in proportion to their respective holdings of stock ; and be it further

*Resolved*, that the President of this Company be directed to notify stockholders of record of the declaration of such dividend, and to see that the same is paid when due to the aforesaid stockholders.

### FORM FOR CLAUSE IN CHARTER PROVIDING FOR ISSUANCE OF INTERIM CERTIFICATES IN LIEU OF CERTIFICATES OF CAPITAL STOCK.

"The Board of Directors may, upon the payment of the capital stock of this Company, either in whole or in part, in the manner above set forth, issue against the money so paid, or the stock or bonds or real or personal property transferred to the Company, or against the services rendered for the Company, non-transferable interim certificates, which shall read in substance as follows, to wit:

This is to certify that on or before the            day of           , 190 , or before, the holder hereof at the option of the Board of Directors of the            Company, will receive            shares of the full-paid and non-assessable capital stock of the

to be issued only upon the surrender of this certificate, properly endorsed by the above-named holder or his legal representatives. This certificate entitles the holder thereof to voting powers in said            Company, equal to the number of shares named above, and further entitles the holder thereof to all the rights and privileges of a stockholder therein to the number of shares set forth, and further entitles the holder above named to all dividends that are declared upon said

Company stock prior to said           , 190 , save and excepting that this certificate shall not be transferred or assigned, prior to           , 190 , save and excepting upon the written consent of all or a majority of the Executive Committee of the            Company provided for in Section            herein.

This certificate certifies further that it is issued by said            Company and accepted by the holder thereof, subject at all times to the terms and conditions hereinbefore set forth.

*Witness* the seal of the            Company and the signatures of its duly authorized officers, affixed this            day of           , 190 ."

### FORM FOR POWER OF ATTORNEY, RELATIVE TO ACTING AS GENERAL MANAGER OF A CORPORATION.

State of            } ss.  
County of            }

*Know all Men by these Presents*: That the            Company, a corporation organized and existing under the laws of the State of           , by           , its president, and           , its secretary, does hereby make, constitute, and appoint            of the City of           , State of           , its true, sufficient, and lawful attorney, for it and in its name, place, and stead, and to its use, to conduct and carry on in and about the city of           , State of           , all and singular its business as a            company, and in connection therewith to purchase and acquire all material,            that may be necessary in the promotion or extension of the business of said            Company, to appoint superintendents, agents, clerks, and employees of all grades, and to fix the salaries of the same; to enter into contracts for and in behalf of said            Company in the carrying on of its business whenever and wherever necessary; to make and execute, sign, seal, and deliver for it and in its name all bills, notes, deeds, or other instruments in writing whatsoever which shall be necessary for the proper conduct of its said business; to secure franchises, rights, and privileges from the Government of            and municipalities thereof or from corporations, firms, and individ-

## FORMS AND PRECEDENTS.

uals residing therein; to discharge at his discretion all or any subordinate officers and agents, clerks or employees, now or hereafter in the employ of said Company, and to do anything and everything that may be necessary for conserving, promoting, or extending the business of said Company as carried on in the said State of

*In Witness Whereof*, the said Company has caused these presents to be signed by its President, and its corporate seal to be hereunto affixed and attested by its Secretary, this day of , 190 .

By \_\_\_\_\_, President.  
Attest: \_\_\_\_\_, Secretary.

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

Before me, \_\_\_\_\_, a Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the President of the \_\_\_\_\_ Company, a corporation, and acknowledged to me that he executed said instrument for the purposes therein expressed, and as the act of said corporation.

\_\_\_\_\_, Notary Public.

### CERTIFICATE OF EXTENSION OF CORPORATE EXISTENCE

We, the undersigned, respectively, President and Secretary of the \_\_\_\_\_ Company, a corporation organized and existing under the laws of the State of \_\_\_\_\_, do hereby certify under the seal of said corporation as follows, to wit: That at a special meeting of the stockholders of said Company, duly called for that purpose, a resolution was duly adopted by a vote of (here state percentage of stock voting in favor of such resolution) in amount of the capital stock, extending the existence of such corporation for a term of \_\_\_\_\_ years beyond the time specified in its original certificate of incorporation, and that a copy of the resolution adopted at said meeting of stockholders is hereto annexed, marked "Exhibit A," and is hereby made a part of this certificate.

*In Witness Whereof*, this certificate has been subscribed by me, \_\_\_\_\_, President of such corporation, and by me, \_\_\_\_\_, Secretary of said corporation, this day of \_\_\_\_\_, 190 .

\_\_\_\_\_, President.  
\_\_\_\_\_, Secretary.

(SEAL.)

(Certificate of acknowledgment.)

### FORM OF CERTIFICATE RELATIVE TO AMENDMENT.

I, \_\_\_\_\_, President of the \_\_\_\_\_ Company, a corporation created and organized under the laws of the State of \_\_\_\_\_, do hereby certify to the Secretary of State of the State of \_\_\_\_\_, that at a meeting of the stockholders of said corporation, regularly held in accordance with the requirements of the laws of said State, at the office of said corporation in the City of \_\_\_\_\_, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 190 , at which meeting (here state what proportion of the stock was represented), of the stock of said company was represented by the holders thereof in person or by proxy, and voted for the following resolution, and that the same was duly, regularly adopted and passed, to wit: (here state the resolution adopted).

Given under my hand and the seal of this corporation.

\_\_\_\_\_, President of the  
\_\_\_\_\_ Company.

(SEAL.)

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### CERTIFICATE OF FOREIGN CORPORATION.

#### NAMING AN AGENT UPON WHOM SUMMONS MAY BE SERVED.

##### KNOW ALL MEN BY THESE PRESENTS :

That the \_\_\_\_\_, a corporation duly organized, created, and existing under and by virtue of the laws of the State of \_\_\_\_\_, and having its principal office or place of business in the City of \_\_\_\_\_, in said State, does hereby designate and appoint \_\_\_\_\_, residing in the City of \_\_\_\_\_, in the State of \_\_\_\_\_, he being a citizen of said State, as its agent for the said State of \_\_\_\_\_, upon whom service of summons and all other legal process may be had and made in all actions or proceedings against said Corporation in any of the courts of said State of \_\_\_\_\_, according to the statutes in such case made and provided.

The said Corporation hereby designates the City of \_\_\_\_\_, in the said State of \_\_\_\_\_, as its principal place of business in said State.

*In Testimony Whereof*, the said Corporation has, by its President, caused these presents to be signed and sealed with its corporate seal at the City of \_\_\_\_\_, in the State of \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

By \_\_\_\_\_

*President.*

(Corporation Acknowledgment.)

#### FORM OF TRUST DEED TO BE EXECUTED BY A CORPORATION IN CONNECTION WITH A BOND ISSUE.

THIS INDENTURE made this \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_, by and between the \_\_\_\_\_ Company, a stock corporation duly organized and existing under the laws of the State of \_\_\_\_\_, party of the first part hereinafter called the Company and the \_\_\_\_\_ Trust Company, a corporation organized and existing under the laws of the State of \_\_\_\_\_, as Trustee for the purposes hereinafter set forth, party of the second part:

*Witnesseth, Whereas*, the said party of the first part is a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and has acquired several plants and properties hereinafter described, and

*Whereas*, the Company in the exercise of the powers in that behalf possessed by it and in accordance with the resolutions duly adopted by its Board of Directors and by its stockholders at a meeting duly and regularly called and held, has determined to make and issue its coupon bonds in the aggregate amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) payable in gold coin of the United States of the present standard of weight and fineness, said bonds to be coupon bonds of the par value of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) each, each of which bonds is to bear a distinctive number, running consecutively from one (1) to \_\_\_\_\_ hundred ( \_\_\_\_\_) and bearing interest at the rate of \_\_\_\_\_ per cent per annum from the first day of \_\_\_\_\_, 190 \_\_\_\_\_, payable semi-annually in like gold coin on the first day of \_\_\_\_\_ and in each year, and

*Whereas*, the said party of the first part under and pursuant to the power and authority aforesaid has determined to secure the prompt payment of the principal and interest of all of said bonds by executing and delivering to the Trustee a mortgage or deed of trust in the terms of this indenture, conveying the plants and properties hereinafter described and set forth, and to that end a mortgage or deed of trust securing said bonds in the form of this indenture was submitted to and approved by the Board of Directors and by the holders of the entire capital stock of the said Company, at a meeting of said directors and of said stockholders respectively, duly, and regularly called and held for said purposes, and the President or Vice-President and the Secretary or Assistant Secretary of the Company were duly authorized at said meeting on behalf of said Company as its act and deed and under its corporate seal to execute and deliver the same to the Trustee; and

## FORMS AND PRECEDENTS.

*Whereas*, the form of bonds and the coupons to be attached thereto, and of the certificate to be signed by the Trustee for the authentication of said bonds were at said meeting severally and respectively submitted and approved by said resolutions of the Board of Directors and of all the stockholders of the Company, and are substantially of the following tenor, to wit:

### (FORM OF BOND.)

#### UNITED STATES OF AMERICA.

No.

COMPANY.

§

**First Mortgage**                      **per cent Sinking Fund Gold Coupon Bonds.**

KNOW ALL MEN BY THESE PRESENTS: That the                      Company  
(a corporation organized and existing under the laws of the State of                      )  
is indebted and for value received, hereby promises to pay to the bearer or  
holder hereof, at its agency or office in the City of New York,                      dollars  
(\$                      ), in gold coin of the United States of the present standard of weight and  
fineness on the                      day of                      , 190                      (unless before that time this bond  
shall have been retired) with interest thereon from                      , 190                      , until the pay-  
ment or redemption of this bond, at the rate of                      per cent per annum, pay-  
able semi-annually, at said office in like gold coin on the first day of                      and  
the first day of                      of each year thereafter upon presentation and surrender of  
the annexed coupons therefor as they respectively mature. Both the principal and  
interest of this bond are payable without reduction for any tax or taxes which the  
Company may be required to pay thereon or to retain therefrom  
under or by reason of any present or future law of the United States or of any  
State, county, or municipality therein.

This bond is one of a series of coupon bonds of the                      Company,  
known as its First Mortgage                      per cent Sinking Fund Gold Coupon Bonds  
issued or to be issued to an amount not to exceed in the aggregate the principal  
sum of                      dollars (\$                      ), all of which said bonds are issued or to be  
issued under and secured by a mortgage or deed of trust dated                      1, 190                      ,  
executed by the                      Company to the                      Trust Company  
(of the City of                      ) as Trustee, to which mortgage or deed of  
trust reference is here made for a description of the property so deeded or mort-  
gaged, the nature and extent of the security, the rights of holders of bonds under  
the same, and the terms and conditions upon which said bonds are issued and  
secured.

This bond is subject to redemption on the                      day of                      , 190                      , and  
on the first day of                      of each year thereafter until its maturity at par with  
the interest then accrued thereon under the operation of a sinking fund which per-  
mits the Company to redeem at least one-tenth of the entire issue of said bonds  
annually, and is subject to redemption on the terms and in the manner provided in  
said deed of trust.

This bond shall pass by delivery. This bond shall not be issued or become  
obligatory for any purpose until it shall have been authenticated by the certificate  
hereon endorsed of said Trustee under said mortgage or deed of trust.

This bond may be registered in the owner's name on the Company's books in  
the City of                      , or at any other place which the Company may  
determine, such registry being noted on the bond by the Company's transfer agent,  
after which no transfer shall be valid unless made on the Company's books by the  
registered owner and similarly endorsed on the bond, but the same may be dis-  
charged from registry by being transferred to bearer after which it shall be trans-  
ferable by delivery, but it may again be registered as before.

Registry of this bond as above shall not restrain the negotiability of the coupons  
by delivery merely, but the coupons may be surrendered and the interest made

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payable only to the registered owner of the bond, such surrender to be certified as follows:

"This is to certify that the coupons representing the several instalments of interest to become due on the within bonds have been surrendered to the Company and cancelled, and interest on this bond when hereafter due will be payable to the registered owner hereof, as certified hereon, or to his order.

Dated

, *Transfer Agent.*"

*In Witness Whereof*, the Company has caused this instrument to be signed by its President, and its corporate seal to be hereunto affixed and to be attested by its Secretary, and coupons for said interest with the engraved signature of its Treasurer. to be attached thereto this first day of , 190 .

COMPANY,  
, *President.*

By

Attest: , *Secretary.*

### TRUSTEE'S CERTIFICATE.

This is to certify that this bond is one of the bonds described in the above mentioned indenture of mortgage or deed of trust dated 1, 190 .

By TRUST COMPANY, *Trustee,*  
, *Trust Officer.*

### FORM OF COUPON.

On the first day of , 190 , the Company will pay the bearer at its office in the City of , dollars (\$ ) in gold coin, free from all taxes, being six months' interest then due on its First Mortgage per cent Sinking Fund Gold Coupon Bonds No.

, *Treasurer.*

and

*Whereas*, in pursuance of the resolution of the Board of Directors and also of the holders of the capital stock of the Company duly adopted at a meeting of said Board of Directors, and of the stockholders, separately and severally called and held, and in pursuance of all and every legal power and authority in it vested, the Company proposes to make and execute and from time to time hereafter issue and deliver bonds secured as hereinabove and hereinafter more particularly set forth:

*Now this Indenture Witnesseth*: That to secure the payment of the principal and interest of such bonds as may at any time be issued and outstanding under this indenture, according to their tenor and effect, and to declare the terms and conditions upon which said bonds are to be so issued, the Company, party of the first part, in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar (\$1.00) lawful money of the United States of America to it duly paid by the Trustee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged, and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, pledge, and set over upon the party of the second part, and to its successor or successors in the trust hereby created, all and singular the following real estate, plants, factories, goods, chattels, machinery, rights, privileges, franchises, and other property, to wit:

The plant and property now belonging to the Company, situated in the County of , and State of , and more particularly described as follows, to wit:

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*Together* with the buildings and structures, erections and constructions now or hereafter placed thereon, and in addition thereto all machinery, fixtures, appliances, implements, and appurtenances of every kind and character which are now or may be hereafter at any time situated lying and being in, on, or about the said plants, premises, and property described herein, and used or provided for use in and about the operation of said plants and property, and the carrying on of the business of the Company in the same, whether the same are now owned by the said party of the first part, or shall hereafter be acquired by it, it being the intention hereof that said plants, premises, and property shall be and are hereby conveyed as an active-going, operating plant.

*To Have and to Hold* the said above described premises, property, rights, franchises, and appurtenances, unto the said party of the second part and its lawful successors or assigns forever.

*But in Trust Nevertheless*, for the benefit, security, and protection of the persons and corporations, firms and partnerships, who may be or become holders of the aforesaid bonds and interest coupons, or any or either of them, and for enforcing the payment thereof when payable, according to the true intent and meaning of the stipulation of this mortgage or deed of trust and of said bonds and of said interest coupons, and without preference, priority, or distinction as to lien or otherwise of any of said bonds over any of the others by reason of priority in the time of the issue of negotiation thereof or otherwise, provided, however, and these presents are upon the express condition that if the party of the first part, its successors or assigns, shall well and truly pay or cause to be paid unto the holders of the bonds to be issued hereunder, the principal and interest to become due thereon, to said holders at the time and in the manner stipulated in said bonds and in said interest coupons according to the true intent and meaning thereof, and shall well and truly keep, observe, and perform all and singular the covenants, promises, and conditions in the said bonds hereby secured and in this indenture expressed to be kept, observed, and performed by or on the part of said party thereby granted, shall cease, determine, and be void, otherwise to remain in full force. And it is expressly covenanted and agreed by and between the parties hereto that the specific trusts, uses, and purposes, conditions and covenants upon which said property and franchises hereby mortgaged and conveyed are to be held by the Trustee and subject to which the said bonds secured hereby are to be issued and to be held by each and every holder thereof, are as follows, that is to say:

*First.* This mortgage or deed of trust is to be a continuing lien to secure the full and final payment of the principal and interest of all bonds which may be from time to time issued and negotiated under the same, but so that the total aggregate amount of said bonds so issued and negotiated shall not exceed                      dollars (\$                      ), and to be issued upon the terms and of the denominations, and to mature and become payable in the manner and at the place and time or times hereinbefore stated, with interest payable as so stated.

*Second.* The coupon bonds intended to be secured hereby shall from time to time be executed by the                      Company and delivered to the Trustee, and the Trustee shall authenticate and deliver the same pursuant to any directions that may be contained in a resolution or resolutions of the Board of Directors of the                      Company, a certified copy of which shall first be lodged with the Trustee, and the Trustee shall not be under any duty to look behind the same, and shall not be in any way responsible for the issue and negotiation of any of such bonds or the application of their proceeds. Only such of said bonds as shall be so authenticated by the Trustee by signing the certificate endorsed thereon, shall be secured by this mortgage or deed of trust, or be entitled to any lien or benefit hereunder, and such certificate of the Trustee shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trust hereby created.

*Third.* The                      Company covenants and agrees that it will fully and entirely pay off and satisfy the whole of the said bonds to be issued hereunder, principal and interest, according to the terms hereof, without delay and without deduction from either said principal or interest for any assessments, taxes, govern-

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mental and other charges now or hereafter imposed upon said bonds or any interest thereon, either by the United States or by any State, country, or municipal authority which the Company may be required to deduct therefrom.

*Fourth.* Until default shall be made in the payment of the principal or interest of any of the bonds hereby secured or any part thereof, as and when the same shall become due and payable, or in the performance or observance of any condition, covenant, or requirement of said bonds or of this mortgage or deed of trust, the Trustee shall permit and suffer the Company, its successors and assigns, to possess, operate, and enjoy the real and personal property hereby mortgaged with the appurtenances thereto belonging, in any manner not inconsistent with these presents, and to receive and use the total incomes, rents, issues, and profits thereof.

*Fifth.* When and as the interest coupons attached to the bonds hereby secured mature and are paid by the Company or by any person or corporation for it or on its behalf, they shall be cancelled. All coupons maturing before the delivery of the bonds by the party of the second part shall be cut off and cancelled by the party of the second part before delivery of such bonds.

Upon the payment at maturity or retracy prior to the maturity by the payment of any bonds hereinbefore provided for, the same shall be cancelled and delivered forthwith to the Trustees.

*Sixth.* The Company covenants and agrees that it shall and will from time to time pay and discharge before the same shall fall into arrears, all taxes, water rates, assessments, and governmental charges lawfully imposed upon the franchises and lands and other hereby mortgaged premises, or any part thereof, the lien of which might or could be held to be superior to the lien hereof, and will pay and discharge all claims of every kind and nature which may hereafter become a lien upon the hereby mortgaged premises or any part thereof, prior to the lien hereof, so that the priority of this mortgage may be duly preserved and will keep said mortgaged premises or any part thereof in good order and repair, and shall not or will not create or suffer to be created any mechanic's, laborer's, or other lien or charge whatsoever upon the mortgaged premises or any part thereof which might or could be impaired prior to the lien of these presents until the bonds hereby secured with all interest accrued thereon shall be fully paid and satisfied.

*Seventh.* The Company covenants and agrees that it shall and will at all times, until said bonds hereby secured with all interest accrued thereon shall be fully paid and satisfied, keep such parts of said mortgaged premises or property as are liable to be destroyed or injured by fire, insured against loss by fire in some solvent insurance company or companies authorized to transact business in the State of and approved by the Trustee, to an amount equal to the insurable value of said property payable in case of loss to the Trustee; and all moneys collected from such insurance shall be held by the Trustee for the further security of the bondholders hereunder until the Company shall, after the fire, have applied an equal sum of money to the reconstruction or repair of the part of the premises destroyed or injured, or to the erection of other permanent improvements upon such mortgaged premises whereupon from such insurance moneys held by the Trustee there shall be paid to the said Company, from time to time, an amount equal to the amount so applied by it after the fire to such reconstruction, repair, or erection.

A resolution of the Board of Directors of the Company, stating the amount applied by it to the reconstruction or repair of the premises so destroyed or injured, or to the erection of other permanent improvements upon such mortgaged premises, together with an affidavit of the President, Vice-President, Secretary, or Treasurer of the Company that such sum of money has been so applied, shall be full and complete authority and protection to the Trustee for the payment to the Company, or upon its order, of the amount stated in such resolution and affidavit, and the Trustee shall be under no duty or obligation to look behind such resolution and affidavit, and shall not be in any wise responsible for the application of any moneys so paid over by it.

*Eighth.* It is further covenanted and agreed that the said Com-

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pany shall well and truly pay or cause to be paid all prior liens and indebtedness of whatsoever nature and description that now exist against the property covered by this mortgage or deed of trust prior to the maturity of the principal sum due on said bonds, and the said Company does hereby agree to procure a release thereof from the holders of said lien or said indebtedness, but no duty to see to such payment or the procuring of such release is hereby imposed on the Trustee.

*Ninth.* The Company shall and will from time to time during the continuance of this trust and mortgage make, execute, and deliver all such further instruments and conveyances as may be necessary to vest in said Trustee and its successors the within described and all subsequently acquired property and rights of property to facilitate the execution of said trust.

*Tenth.* It is further covenanted and agreed that the personal property hereinbefore described and hereby conveyed, or intended so to be, shall be held and be taken to be fixtures and appurtenances of the premises, and as part thereof, and are to be used and sold therewith and not separate, except as herein expressly provided.

*Eleventh.* The Company shall be permitted, without reference to the Trustee, to alter, remove, sell, or dispose of any buildings, fixtures, machinery, or other personal property herein described as covered by or located upon the mortgaged premises hereinafter described which cannot be advantageously used in the judicious operation and management of the business of said Company, provided always that said Company shall and it hereby agrees in such case that it will replace any buildings, fixtures, machinery, or other personal property so altered, removed, sold, or disposed of by acquiring subject to this mortgage, other buildings, fixtures, machinery, or other personal property equal in value to the property so altered, removed, sold, or disposed of, the same being erected at the option of said Company upon real estate that may now or hereafter be owned, leased, or otherwise acquired by said Company, or which may hereafter be owned, leased, or otherwise acquired by said Company, or in lieu of the foregoing the said Company shall be permitted, without reference to the Trustee, to alter, remove, sell, or dispose of any buildings, fixtures, machinery, or other personal property erected upon the mortgaged premises above described which cannot be advantageously used in the judicious operation and management of the business of said Company by paying to said Trustee the appraised value of such property, and any such sums so received by said Trustee shall upon request of said Company be invested in bonds secured by this mortgage, or in bonds, mortgages, or securities authorized by law for the investment of funds of savings banks in the City of New York, which bonds, mortgages, or securities shall be held for further security of the bonds secured by this mortgage; but until default in the payment of the principal or interest of the bond secured hereby or some part thereof, the interest and income of said bonds, mortgages, or securities shall be paid to the Company. No duty or responsibility is imposed upon the Trustee by the provisions of this article, except to receive such funds as may be paid to it by the Company, and invest the same as herein provided.

*Twelfth.* For the purpose of providing against any depreciation of the security reserved herein by reason of any cause, and for the further purpose of providing the necessary funds with which to make payments of said bonds either as they mature or as they may be retired under the conditions herein set forth, said Company shall set aside and reserve from and after the first day of \_\_\_\_\_, from its earnings, an amount equal in value to one-tenth in amount of the principal due upon all bonds issued and outstanding on that day, and shall set aside and reserve for the same purpose after the first day of \_\_\_\_\_, 190 , 190 , 190 , 190 , 190 , 19 , 19 , 19 , 19 , a similar proportion of the principal due upon all bonds outstanding on those days respectively, such reservation to be for the purpose of providing a sinking fund under the conditions hereinafter set forth.

On or before the first day of \_\_\_\_\_ of each year, commencing in 190 , while the lien of these presents shall continue, the Company shall pay over to the Trustee all moneys reserved as aforesaid for the purpose of a sinking fund. Immediately upon receipt of moneys by the said Trustee from said Company for the



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sinking fund as provided herein, the Trustee shall forthwith on receipt of said moneys draw by lot from the entire number of bonds which shall be outstanding on the first day of \_\_\_\_\_, 190 , and in each year thereafter until the year 19 , such a number of bonds for redemption as it shall have funds to redeem at par, the same not to exceed in any case the sum of one-tenth of the amount of bonds outstanding on the day when such payment to the Trustee becomes due and payable, and the holders of said bonds so drawn shall be forthwith notified by the Company in writing that their bonds will be redeemed at par with accrued interest thereon to the first day of September of the year in which the said redemption occurs, and such bonds shall thereupon cease to draw interest from the date fixed for redemption, and shall be redeemed by the said Trustee on and after that day and at the price aforesaid out of the money placed in its hands on account of said sinking fund.

All bonds which shall have been from time to time purchased or redeemed through the sinking fund hereby created shall be forthwith destroyed by the said Trustee in the presence of some officer or other person to be designated by said Company, who shall certify to said Company in writing the fact of said destruction and the number of bonds so destroyed.

*Thirteenth.* These presents and the trust conditions and powers hereby imposed or granted may be altered, curtailed, enlarged, or added to in any manner that shall be agreed upon between the said Company and the said Trustee provided that such alterations, curtailments, enlargements, or conditions shall have been first approved by the holders of two-thirds in amount of all of the then outstanding bonds secured by these presents at a meeting of the mortgaged bondholders to be summoned by said Trustee at the request of the Board of Directors of said Company and upon two weeks' written notice of the time and place and purpose of said meeting to be sent by mail to all of the said bondholders whose places of residence can be ascertained.

The approval by the requisite number of bondholders of such alterations, curtailments, enlargements, or additions shall be evidenced by some instrument in writing duly executed by them under their hands and seals in person or by attorney duly authorized, which instrument shall be lodged with the said Trustee as its authority for assenting thereto.

The alterations, curtailments, enlargements, or additions, when so approved, shall be embodied in an indenture under seal duly executed by and between the said Company and the said Trustee in such manner as to entitle the same to be recorded in \_\_\_\_\_ County, in the State of \_\_\_\_\_. When said indenture shall have been so executed and delivered to the said Trustee, these presents shall forthwith be deemed to have been altered, curtailed, enlarged, or added to, in accordance therewith, and the Trustee shall cause said indenture to be recorded in said County, but the said Trustee shall have the power to refuse to agree to such alterations, curtailments, enlargements, or additions, in case it shall think that the same shall unreasonably impair or prejudice the rights of the bondholders who do not assent thereto.

*Fourteenth.* In case default shall be made in the payment of any interest on any of said bonds secured hereby, as and when such interest shall become due, and if default shall continue for one month, or in case default shall be made in the payment of the principal of any of the said bonds when the same shall become due or otherwise become payable, then, and in every such case the Trustee may at its option and in its discretion with or without entry sell all the premises, estate, property, rights, and franchises hereby conveyed, or so intended to be at public auction at the front door of the Court House or other suitable place in the City of \_\_\_\_\_, State of \_\_\_\_\_, after giving notice of such sale as required by the statutes of the State of \_\_\_\_\_, in such case made and provided, and from time to time to adjourn such sale or sales, in its discretion and without further notice to hold such adjourned sale or sales hereunder, to make and deliver to the purchaser and purchasers of the premises, estate, property, rights, and franchises so sold a good and sufficient deed or deeds for the same, which sale shall be a perpetual bar both in law and in equity against the said \_\_\_\_\_ Company, and all persons and corpora-

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tions lawfully claiming or to claim by, through, or under it, and upon the making of said sale the principal of all the bonds hereby secured and then outstanding shall forthwith become due and payable, anything in said bonds to the contrary notwithstanding, and upon the making of any such sale the said Trustee shall apply the proceeds thereof as follows, to wit:—

1st. The payment of the costs and expenses of such sale or sales, including a reasonable compensation to said Trustee, its agents, attorney, and counsel, and all expenses, liabilities, and advances made and incurred by said Trustee in managing and maintaining the property hereby conveyed or intended to be conveyed and all taxes and assessments superior to the lien of these presents.

2nd. The payment of the whole amount of principal and interest which shall then be owing or unpaid upon the bonds secured hereby without preference or priority whatever, whether the said principal by the tenor of said bonds be then due or yet to become due, and in case of the insufficiency of such proceeds to pay in full the whole amount of such principal and interest owing and unpaid upon said bonds, then to the payment of such principal and interest *pro rata* without preference or priority, but ratably to the aggregate amount of such principal and accrued and unpaid interest.

3rd. To pay over the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

*Fifteenth.* It is further declared and agreed that the receipt of the Trustee who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers, his or their heirs, or assigns, or personal representatives, and such purchaser or purchasers shall not, after paying such purchase money and receiving such receipt of the Trustee therefor, be obliged to see to the application of such purchase money upon or for the trusts or purposes of these presents, or to be in any wise answerable for any loss, misapplication, or non-application of such purchase money by the Trustee.

*Sixteenth.* In case default shall be made in the payment of the principal or interest of said bonds, when same shall become due and payable, or in the observance or performance of any covenant or condition in said bonds, or herein contained on the part of the party of the first part, and such default shall continue for six months, it shall be the duty of, and it is hereby made obligatory upon the Trustee, upon the request in writing of a majority in interest of said bonds secured and then outstanding, executed and acknowledged by the holders thereof, or their attorneys thereunto duly authorized in writing, and upon proper indemnification to proceed forthwith to enforce the rights of said Trustee and of the bondholders, hereunder, by sale or entry, or both, according to such requisition, or by judicial proceedings for such purpose, as the Trustee, being advised by counsel, learned in the law, shall deem most expedient in the interest of the holders of the bonds secured thereby; the choice between such remedies being left to the discretion of the Trustee.

*Seventeenth.* The several remedies granted hereunder shall be cumulative and non-exclusive one of the other, and shall be in addition to all other remedies to enforce the lien of these presents.

*Eighteenth.* Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Trustee or of the bondholders under these presents, the said Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the property hereby mortgaged, and of the earnings, income, rents, issue, and profits thereof, pending such proceedings.

*Nineteenth.* Upon payment, when due, of both principal and interest of all the bonds which shall have been issued thereunder, the Trustee shall, upon the written request of the

Company, enter satisfaction of this mortgage upon the records, and shall do, make, execute, and deliver such deeds, acts, instruments, or assurances as may be necessary to vest all the mortgaged premises and property of the said

Company, its successors, and assigns, free and discharged from the lien of these presents.

*Twentieth.* Upon the terms and conditions stated in this article, and not otherwise, the Trust Company hereby accepts the trust of this instrument,

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and the Company and all present and future holders of bonds and coupons secured hereby expressly assent and agree to, and acknowledge themselves bound by, said terms and conditions. The Trustee shall not be answerable to anybody for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, or for anything whatever in connection with this trust, except wilful misconduct or gross negligence after personal notice and distinct specification in writing from some person interested in the trust. The Trustee shall incur no liability to anybody in acting upon any notice, request, consent, certificate, bond, document, or paper believed by it to be genuine and to have been signed by the proper person. It shall be no part of the duty of the Trustee to see to the insurance of any part of the property hereby conveyed in trust, or itself to effect such insurance. The Trustee may become the owner of bonds and coupons secured hereby with the same rights which it would have if it were not Trustee.

The Trustee shall not be personally liable for any debts contracted by it, or for any damage to person or property, or arising out of non-payment of salaries, non-fulfilment of contracts, or for any other tort obligation and liability arising during any period wherein the Trustee shall manage the trust properties hereunder. The trust estate is hereby made primarily liable to such persons for every such liability and for every liability of any kind which the Trustee may incur thereunder; and for compensation for services and reimbursements of all the expenses hereunder with interest, the Trustee shall have a first lien upon the property hereby conveyed. The Trustee shall not be under any obligation or duty to perform any act hereunder, to take any action towards the execution or enforcement of the trust hereby created, or to defend any suit in respect hereof, except upon request in writing of some person or persons interested in the trust, nor unless first satisfactorily indemnified, nor unless satisfactory provisions be made to furnish the Trustee with additional indemnity against liability from time to time as in the judgment of the Trustee may be required for its protection; nor shall the Trustee be required to take notice of any default hereunder, or to take any action in respect of any defaults, unless requested to take notice in respect thereof by a writing signed by the holders of at least a majority in interest of the bonds hereby secured and then outstanding, and tendered reasonable indemnity as aforesaid, anything herein contained to be contrary notwithstanding, but neither any such request nor this provision therefor shall affect any discretion herein or elsewhere especially given to the Trustee.

Any money received by the Trustee under any provision of this indenture may be treated by it, until it is required to pay out the same conformably herewith, as a general deposit, without any liability for interest save such as, during that time, it allows to its general depositors. The Trustee shall not be responsible for the recording, registration, or filing of this instrument or any instrument of further assurance, or for the affixing or cancellation of any revenue stamps or for the estimation or payment of any taxes, or for not complying with the laws of \_\_\_\_\_, with respect to such subjects or with respect to any other subject; nor shall it be bound to see that notice of the lien and provisions hereof is given to any person whomsoever, all of which matter the said \_\_\_\_\_ Company covenants and agrees to see and perform.

The Trustee may, in its discretion, advise with legal counsel to be selected and employed by it at the expense of the \_\_\_\_\_ Company, and anything done or suffered in good faith by the Trustee in accordance with the opinion of counsel shall be conclusive in favor of the Trustee on the \_\_\_\_\_ Company and on all holders of bonds and coupons secured hereby.

The duties of the Trustee to the \_\_\_\_\_ Company, and to the holders of bonds and coupons secured hereby, shall be determined solely by the provisions of this instrument and by the laws of the State of \_\_\_\_\_.

The \_\_\_\_\_ Company agrees, from time to time, on demand, to pay to the Trustee reasonable compensation for its services hereunder; also to make reimbursements to the Trustee for all counsel fees, compensation of attorneys and agents, and other expenditures made by the Trustee hereunder, with interest thereon; also to indemnify and save the Trustee harmless against any and all liabilities of any

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kind which the Trustee may incur in the exercise and performance of its powers and duties hereunder, including any penalty or liability suffered by the Trustee under this instrument, or because of any action taken by it thereunder for non-compliance with the laws of \_\_\_\_\_, or \_\_\_\_\_, concerning foreign corporations or otherwise; and for such indemnification, reimbursement, and payment of Trustee's compensation a first lien is hereby imposed in favor of the Trustee upon all the property and funds hereby conveyed in trust.

The recitals and statements herein, and in said bonds and coupons contained, save only the certificate of authentication by the Trustee, shall be taken as statements by the party of the first part, and shall not be considered as made by or as imposing any obligation or liability upon the Trustee, nor shall the Trustee be held responsible for the legality or validity of said bonds or coupons under any provisions of the laws of \_\_\_\_\_, or otherwise.

And it is further covenanted and agreed that the Trustee may resign and discharge itself of the trust hereby created by notice in writing to the \_\_\_\_\_ Company to be given at least three months before such resignation is so given. If a vacancy in the office of Trustee hereunder shall occur, a new Trustee shall be appointed as follows:

Ten days' notice shall be given to each holder of the bonds hereby secured, apprising them of the fact that a change of Trustee hereunder is necessary, and that unless objection is made within ten days from the date of such notice by a majority of the bondholders, a new Trustee, to be designated in said notice, will be appointed. If the majority of the bondholders disapprove of the choice designated for such new Trustee, the matter shall be left to the present Trustee, the said Trust Company.

In executing this indenture the Trustee makes no covenant or representation as to the title or interest of the \_\_\_\_\_ Company in, or to, the property described therein, and it shall be no part of the duty of the Trustee to see that any of the property intended to be conveyed in trust hereunder is properly and legally subjected to the lien hereof.

It is expressly understood that the Trustee shall be under no duty or liability in respect to any tax which may be assessed against the property or against the owners of the bonds hereby secured, in respect to the property hereby conveyed, nor shall the Trustee be under any duty to pay, or see to the payment of, such tax, or take any notice thereof to the holders of the bonds secured hereby, or any other person, and for any expense or liability which the Trustee may incur by reason of, or growing out of, any such tax, the Trustee shall have a lien on the property hereby secured prior to the lien of the bonds hereby secured.

The Trustee shall have the right to require proof of the ownership of any bond by the production of the bond. The holding and date of holding of bonds by any bondholder executing any paper or instrument provided for herein, and the amounts and issue number of the bonds held by such person may be proved by a certificate in writing executed by any depository approved by the Trustee showing that such person had on deposit with such depository the bonds described in such certificate at the date therein mentioned.

In case any bond secured hereby shall become mutilated or lost, then upon the surrender of such mutilated bond to the Trustee, or upon filing with the Trustee evidence of such loss, and giving indemnity which the Trustee shall consider satisfactory, the \_\_\_\_\_ Company in its discretion may issue, and the Trustee may certify a new bond bearing the same serial number and in identical form in substitution or exchange for the bond so mutilated or lost.

Whenever in this deed of trust the existence of any situation, matter, conclusion, or fact of any character, or the sufficiency or validity of any instrument, paper, or proceeding, or of any proof or evidence of any fact of any character, shall be prescribed as a condition of, or in any manner with respect to, any action or proceeding on the part of the Trustee, or shall be deemed necessary to be ascertained by the Trustee as the basis of an opinion by the Trustee, a certified copy of a resolution of the \_\_\_\_\_ Company, together with a certificate of the President and Vice-President, Treasurer, Secretary of the \_\_\_\_\_ Company, verified

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

under oath, shall in the discretion of the Trustee be sufficient evidence of any such fact, situation, matter or conclusion stated therein, and shall be complete protection on its part upon the faith thereof; but the Trustee may, in its reasonable discretion, require other evidence.

The Company covenants and agrees that it will pay the Trustee hereunder its necessary fees and expenses in the execution of the trust hereby created.

*In Witness Whereof*, the party of the first part has caused these presents to be signed by its President, and its corporate seal to be hereunto affixed, and attested by its Secretary and the party of the second part, in token of its acceptance of the trusts and the obligations hereby imposed upon it, has caused these presents to be signed by its second Vice-President, and attested by its Secretary, and its seal to be hereunto affixed, the day and year first herein written.

Attest: By  
*, Secretary.* COMPANY,  
*, President.*  
By TRUST COMPANY, Trustee.  
*, Vice-President*

State of }  
County of } ss.

Before me, , a Notary Public, in and for the County of , State of , on this day personally appeared , known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the President of the Company, a corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed and as the act of said corporation.

*, Notary Public,*  
*Co.*

State of }  
County of } ss.

Before me, , a Notary Public, in and for the County of , State of , on this day personally appeared , known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the of the Trust Company, a corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation.

*, Notary Public,*  
*Co.*

## AFFIDAVIT OF MAILING NOTICE OF STOCKHOLDERS' MEETING.

State of }  
County of } ss:

having first been duly sworn on oath says: that he is the Secretary of the Company, a corporation organized and existing under the laws of the State of ; that on the day of 19 , he caused a notice of the annual (or special) meeting of the stockholders of said Company, a true copy of which is hereto annexed and is hereby made a part of this affidavit, to be mailed in a sealed envelope, postage prepaid, addressed to each stockholder of record of said Company at his last known address as the same appears on the books of the Company.

Sworn and subscribed to before me this

day of , 19 .

*, Notary Public,*  
*County*

# FORMS AND PRECEDENTS.

## FORM FOR CERTIFICATE OF AUTHORIZATION TO COUNTERSIGN CERTIFICATES OF STOCK.

THE \_\_\_\_\_ COMPANY,  
\_\_\_\_\_, Registrar.

THIS IS TO CERTIFY, That at a meeting of the Directors of the Company, duly convened and held on the \_\_\_\_\_ day of \_\_\_\_\_, 190 , the following resolutions were adopted:

*Resolved*, That the \_\_\_\_\_ Company be and is hereby appointed the Registrar of the shares of the stock of this Company.

*Further Resolved*, That said \_\_\_\_\_ Company is authorized to countersign, when signed by the President and Secretary of this Company, an original issue of certificates of shares of this Company to the number of \_\_\_\_\_ shares of Common Stock and \_\_\_\_\_ shares of Preferred Stock, and to enter the particulars of the holdings of said shares in the register from time to time.

*Further Resolved*, That the \_\_\_\_\_ Company may apply and act under instructions of \_\_\_\_\_, Counsel of this Company, in respect to any legal question arising in connection with said Agency.

*Further Resolved*, That the Secretary be and is hereby authorized to sign, and seal with the Company's Seal, a Certificate of Authorization to said Company in the form submitted at this meeting.

That the total authorized capital stock of said Company is \$ \_\_\_\_\_, divided into \$ \_\_\_\_\_ of Common Stock and \$ \_\_\_\_\_ of Preferred Stock.

That said shares are the par value of \$ \_\_\_\_\_ each.

That \_\_\_\_\_ certificates of stock are now outstanding.

That the property for which the above-mentioned shares are issued has been actually conveyed or transferred and delivered to the Company.

That the Officers authorized by the foregoing resolutions to sign certificates of stock will sign as follows:

The President will sign

The Secretary will sign

Names of Officers.

Addresses.

*President,*  
*Vice-President,*  
*Treasurer,*  
*Secretary,*  
*Attorney,*

Names of Directors.

Addresses.

Business address of the Company,

Date of Annual Meeting,

Notice for calling Annual Meeting as required by the By-Laws.

Signed and sealed in behalf of the Company by authority of the Board of Directors, this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

For the Company,  
\_\_\_\_\_, Secretary.

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resided in \_\_\_\_\_; that he is the \_\_\_\_\_ of the \_\_\_\_\_ Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

instrument was such corporate seal; that it was affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

\_\_\_\_\_, *Notary Public.*  
County.

### UNDERWRITING AGREEMENT.

\_\_\_\_\_  
COMPANY.

Covering                      Year, First Mortgage,                      per cent,                      Sinking Fund, Coupon  
                                         Gold Bonds; redeemable at                      and interest.

Dated                      , 190 .                      Due                      , 19 .

Interest Payable                      and                      at the office of the                      Trust Company,  
Trustee.

THIS AGREEMENT, made and entered into this                      day of                      , 190 , by and between                      of the city of                      , State of                      , parties of the first part (hereinafter called "the Managers"), and the several subscribers to this syndicate agreement, parties of the second part:

*Whereas*, the parties of the first part have organized a corporation known as the                      Company," under the laws of the State of                      , with a capital of                      divided into                      shares of the par value of \$                      each, which will issue of first mortgage, six per cent,                      year, sinking fund, coupon gold bonds, subject to call at                      and accrued interest, of which                      will be used as part payment of the property purchased and                      will be left in the treasury for its use, leaving                      which are hereby underwritten.

*And Whereas*, the subscribers hereto are desirous of underwriting a portion of the proposed issue of bonds, as provided by this agreement, and thereby participating in the profits to be derived from the sale of said bonds or becoming the owners thereof. Now, this agreement witnesseth:

That in consideration of the premises, and the mutual promises hereinafter contained, the subscribers severally, but not jointly, agree with the Managers and with each other as follows:

I. The subscribers severally subscribe for said first mortgage,                      per cent, year, sinking fund, coupon gold bonds, to the amounts (par value) set opposite their names respectively, and agree to take and pay for said bonds, or any part thereof allotted to them, in cash, at                      per cent of par, together with accrued interest; payment therefor to be made to the                      Trust Company, hereinafter called "the Trustee," in the City of                      , upon demand of the managers when bonds or interim certificates representing the same shall be ready for delivery, but payment shall not be required before                      , 190 . Upon such payment, the subscriber shall receive an interim certificate of the                      Trust Company in lieu of said bonds, which certificate shall also provide for the delivery of the bonds and all coupons attached on                      , 190 , or before, in the discretion of the Managers. Each subscriber upon the payment of each                      exclusive of interest shall receive par value of bonds aforesaid and                      par value of the said stock.

II. It is further agreed that all bonds allotted and taken hereunder shall be held by the parties of the second part, subject to the demand and control of the Managers except as hereinafter provided, until                      , 190 , who shall, during such time, have full power and discretion to sell the said bonds or any part thereof for the joint benefit of the parties of the second part at not less than                      and accrued interest, by either public or private sale, and that upon notice by the Managers to any subscriber hereto, the bonds allotted to him or the part designated by the Managers, shall be delivered to the Trustee, except such as shall have been previously withdrawn from sale, as hereinafter provided, and said Managers shall, within thirty days after such delivery, pay to the Trustee, to be remitted to the owners of the bonds so deposited,                      per cent of their par value, together with accrued interest. The managers shall, so far as practicable, call from the subscribers hereto, bonds *pro rata*.

III. It is mutually agreed by the subscribers hereto that this syndicate shall

## FORMS AND PRECEDENTS.

hold all of the said bonds subscribed for as a joint holding for a period of six months from the day of \_\_\_\_\_, 190\_\_\_\_, unless said bonds are sooner sold, and that the time for the joint holding of any remaining unsold bonds may be further extended for a period to be determined by a vote of two thirds in interest of the subscribers. Any member of this syndicate authorized by the Managers may offer and sell the bonds, as opportunity occurs, at a price to be fixed from time to time by the Managers; said price, however, not to be less than \_\_\_\_\_ and accrued interest, to the syndicate, except by written consent of two-thirds in interest of the subscribers hereto.

IV. Any subscriber duly authorized to sell bonds, shall be paid a commission of one per centum of the par value of the bonds sold by him, said commission to be paid by the Managers and charged to the syndicate at the time of such sale and delivery; any syndicate member selling any bonds shall at the time notify the Managers and shall receive instructions from said Managers as to whether said bonds so sold shall be delivered from his holding, or be drawn by him from the Managers.

In the event of his being instructed to deliver his own bonds, he shall immediately remit to the said Trustee, to the credit of the Managers, the difference between the cost, viz.: \_\_\_\_\_ and interest, and the selling price of the bonds; and in the event of drawing them from the Managers, he shall pay the Trustee, for the credit of the Managers, for the bonds, at the full authorized selling price, together with accrued interest to date of delivery.

V. Any subscriber hereto may withdraw his bonds from this underwriting agreement, provided such subscriber notifies, in writing, the Managers, at the time of signing the underwriting agreement, of his or their intentions so to do; such party so withdrawing bonds agrees, during the life of the underwriting agreement and any extension thereof, not to offer for sale or sell any of such bonds, and waives profits, except stock hereunder.

VI. The right and power to enforce this agreement, when the same shall become binding, operative and effective, is hereby vested exclusively in the Managers, who alone shall have the right to enforce payment of all obligations assumed by the subscribers hereto.

VII. In case for any reason, whether before or after this agreement has otherwise become binding, operative, and effective, the Managers shall determine to abandon this underwriting plan, and the organization of the corporation, and shall so declare, then this agreement in all its parts, including the obligation to deliver said bonds or any of the stock, shall be and become forthwith null and void, and the subscribers hereto shall be notified accordingly by the Managers, and all moneys paid hereunder shall be returned.

VIII. The Trustee shall be the depository of the Managers and shall hold the joint funds and profits arising hereunder, and shall distribute the same from time to time in accordance with the directions of the Managers, *pro rata* among the subscribers hereto, except that it shall pay therefrom the commissions and expenses arising hereunder.

IX. The managers shall receive no compensation for their services as Managers and shall not be liable under any of the provisions of this agreement, or in or for any matter therewith connected, provided reasonable care and discretion shall have been exercised by them in the discharge of their duties.

X. This agreement shall be binding upon the parties of the second part only when subscriptions hereto shall have been made to the extent of at least \_\_\_\_\_. Right is reserved to reject any subscription or to allot a less amount than that subscribed for.

*In Witness Whereof*, the parties of the first part have signed an original hereof, and the subscribers, parties of the second part, have signed said original or a counterpart thereof, all of which shall be taken and deemed as one original instrument.

Managers {

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscribers.

Address.

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### VOTING TRUST AGREEMENT.

THIS AGREEMENT made this                      day of                      , 190 , by and between the undersigned, stockholders of the                      Company, parties of the first part, and                      Trust Company, party of the second part :

*Witnesseth*, That in consideration of the mutual covenants and agreements hereinafter set forth, and in further consideration of the sum of one dollar by each of the parties paid to the others, the receipt of which is hereby acknowledged, the said parties to this agreement hereby agree by and with each other as follows, to wit :

*First.* The said parties of the first part do hereby assign and transfer and agree to deliver unto the said party of the second part, the number of shares of stock of the                      Company (a corporation organized and existing under the laws of the State of                      ) set opposite their respective names, to be held by said party of the second part until the                      day of                      , 190 ; in trust, however, for said parties of the first part, their executors, administrators, and assigns, at all times subject to the terms and conditions hereinafter set forth.

*Second.* Said parties of the first part do hereby covenant and agree that said party of the second part as voting trustee for said parties of the first part, shall, for a period of                      years from date hereof, possess and be entitled to exercise, without restriction or restraint other than is herein contained, the right to vote said shares of stock in said                      Company hereby conveyed by said parties of the first part to said party of the second part.

*Third.* The said party of the second part does hereby promise and agree with said parties of the first part, that every holder of voting trust certificates issued as hereinafter provided, shall, immediately upon the execution of this agreement and upon the delivery by him to said party of the second part of the stock certificates hereby assigned, receive from said party of the second part voting trust certificates to an aggregate amount equal to the amount of stock so delivered, which certificates shall be in the following form, to wit :

### VOTING TRUST CERTIFICATE.

ISSUED BY THE

TRUST COMPANY.

THIS IS TO CERTIFY, that                      [insert name of stockholder] will within                      years from date hereof be entitled to receive, and the undersigned does hereby covenant and agree that he shall receive, a certificate for full paid shares of                      dollars each of the common stock of the                      Company, and a certificate for                      full paid shares of                      dollars each of the preferred stock of the                      Company, and that in the meantime he shall receive payments equal to the dividends, if any, collected by the undersigned as voting trustee upon a like number of shares of common stock and preferred stock heretofore assigned by said                      to the undersigned in trust ; and until the                      day of                      , 190 , the undersigned, as such voting trustee, shall possess and be entitled to exercise the right to vote in respect to any of such stock ; it being expressly stipulated and agreed that no voting rights shall pass to the holder hereof by virtue of his ownership of this certificate. This certificate has been issued pursuant to the terms of an agreement in writing dated                      , 190 , made and entered by the above-named                      and others, as stockholders of said                      Company, parties of the first part named in said agreement, and the undersigned as the party of the second part named in said agreement, which agreement is now on file with the undersigned, and is open to inspection at any time by the said                      , or his assigns.

This certificate is transferable only on the voting trust certificate book (which it is hereby covenanted and agreed shall be kept for that purpose by the undersigned) either in person or by power of attorney duly authorized, according to

## FORMS AND PRECEDENTS.

rules which have been established for that purpose by the undersigned and upon surrender hereof; and until so transferred the undersigned may treat the registered holder as the owner hereof for all purposes whatsoever, except that delivery of such certificates herein shall not be made without the surrender hereof.

*In Witness Whereof*, the said \_\_\_\_\_ Trust Company has caused these presents to be signed by its President and its Corporate Seal to be hereunto affixed, and to be attested by its Secretary this \_\_\_\_\_ day of \_\_\_\_\_, 190 \_\_\_\_\_.

Attest :

TRUST COMPANY,  
\_\_\_\_\_, President.

\_\_\_\_\_, Secretary.

*Fourth.* That each and all of the covenants and agreements contained in the foregoing form of voting trust certificate are hereby made part and parcel of this agreement, and shall be and are hereby made binding upon the several parties to this agreement, their executors, administrators, successors, and assigns.

*Fifth.* At any time until the expiration of this agreement as hereinbefore provided, the said party of the second part may receive any additional full paid shares of the capital stock of the \_\_\_\_\_ Company, either common or preferred, upon the terms and conditions of this agreement, and it shall deliver in exchange therefor voting trust certificates as hereinbefore provided.

*Sixth.* In voting stock held by it, the said party of the second part shall exercise its best judgment and discretion at all times in voting for the election of suitable directors for said \_\_\_\_\_ Company, to the end that the affairs of the Company shall be carefully and intelligently managed, and in voting on all other matters which may come before it at any stockholders' meeting of said Company, shall exercise like judgment and discretion.

*Seventh.* It is hereby covenanted and agreed that the said party of the second part shall not be liable or incur any responsibility by reason of its acts of omission or commission in the premises, except for wilful misconduct or gross negligence in the execution of the trust hereby created, and which is hereby accepted by said party of the second part.

*In Witness Whereof*, the several parties to this agreement have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

## CERTIFICATE OF INCORPORATION

OF

UNITED STATES STEEL CORPORATION (AS AMENDED) (NEW JERSEY CHARTER).

We, the undersigned, in order to form a corporation for the purposes herein-after stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows :

I. The name of the corporation is UNITED STATES STEEL CORPORATION.

II. (Clause designating office and agent in New Jersey.)

III. The objects for which the corporation is formed are :

To manufacture iron, steel, manganese, coke, copper, lumber, and other materials, and all or any articles consisting, or partly consisting, of iron, steel, copper, wood, or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use, or develop any lands containing coal or iron, manganese, stone, or other ores, or oil, and any wood lands, or other lands for any purpose of the Company.

To mine, or otherwise to extract or remove, coal, ores, stone and other minerals and timber from any lands owned, acquired, leased, or occupied by the Company, or from any other lands.

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To buy and sell, or otherwise to deal or to traffic in iron, steel, manganese, copper, stone, ores, coal, coke, wood, lumber, and other materials, and any of the products thereof, and any articles consisting or partly consisting thereof.

To construct bridges, buildings, machinery, ships, boats, engines, cars, and other equipment, railroads, docks, slips, elevators, water works, gas works, and electric works, viaducts, aqueducts, canals, and other water-ways, and any other means of transportation, and to sell the same, or otherwise to dispose thereof, or to maintain and operate the same, except that the Company shall not maintain or operate any railroad or canal in the State of New Jersey.

To apply for, obtain, register, purchase, lease, or otherwise to acquire, and to hold, use, own, operate, and introduce, and to sell, assign, or otherwise to dispose of, any trade marks, trade names, patents, inventions, improvements, and processes used in connection with or secured under letters patent of the United States, or elsewhere or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise to turn to account any such trade marks, patents, licenses, processes, and the like, or any such property or rights.

To engage in any other manufacturing, mining, construction, or transportation business of any kind or character whatsoever, and to that end to acquire, hold, own, and dispose of any and all property, assets, stocks, bonds, and rights of any and every kind, but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

To acquire by purchase, subscription, or otherwise, and to hold or to dispose of, stocks, bonds, or any other obligations of any corporation formed for, or then or heretofore engaged in or pursuing, any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned, or of any corporation owning or holding the stocks or the obligations of any such corporation.

To hold for investment, or otherwise to use, sell, or dispose of, any stock, bonds, or other obligations of any such other corporation; to aid in any manner any corporation whose stock, bonds, or other obligations are held or in any manner guaranteed by the Company, and to do any other acts or things for the preservation, protection, improvement, or enhancement of the value of any such stock, bonds, or other obligations, or to do any acts or things designed for any such purpose; and, while owner of any such stock, bonds, or other obligations, to exercise all the rights, powers, and privileges of ownership thereof, and to exercise any and all voting power thereon.

The business or purpose of the Company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct its business in other States, and in the Territories, and in foreign countries, and may have one office, or more than one office, and keep the books of the Company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage, and convey real and personal property, either in or out of the State of New Jersey.

Without in any particular limiting any of the objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations in payment for property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any stocks, bonds, or other obligations, or any property which may be acquired by it, to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends, or bonds, or contracts, or other obligations; to make and perform contracts of any kind and description and in carrying on its business, or for the purpose of attaining or furthering any of its objects, to do any and all other acts and things, and to exercise any and all other powers which a copartnership or natural person could do and exercise, and which now or hereafter may be authorized by law.

IV. The total authorized capital stock of the corporation is eleven hundred million dollars (\$1,100,000,000), divided into eleven million shares of the par value of one hundred dollars each. Of such total authorized capital stock, five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall

## FORMS AND PRECEDENTS.

be preferred stock, and five million five hundred thousand shares, amounting to five hundred and fifty million dollars, shall be common stock.

From time to time, the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the Board of Directors, and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, *payable quarterly on dates to be fixed by the by-laws*. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividend on the common stock shall be paid or set apart; so that, if in any year dividends amounting to seven per cent shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared, and the Company shall have paid such cumulative dividends for previous years, and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares, and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

V. The names and post-office addresses of the incorporators, and the number of shares of stock for which severally and respectively we do hereby subscribe (the aggregate of our said subscriptions being                      thousand dollars, is the amount of capital stock with which the corporation will commence business), are as follows:

(Here follow the names and post-office addresses of each of the incorporators, and the number of shares of stock subscribed for by each.)

VI. The duration of the corporation shall be perpetual.

VII. The number of Directors of the Company shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The Directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the Board of Directors. The Directors of the first class shall be elected for a term of one year; the Directors of the second class for a term of two years; and the Directors of the third class for a term of three years; and at each annual election the successors to the class of Directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of Directors shall expire in each year.

The number of the Directors may be increased as may be provided in the by-laws. In case of any increase of the number of the Directors the additional Directors shall be elected as may be provided in the by-laws by the Directors or by the stockholders at an annual or special meeting; and one-third of their number shall be elected for the then unexpired portion of the term of the Directors of the first class, one-third of their number for the unexpired portion of the term of the Directors of the second class, and one-third of their number for the unexpired portion of the term of the Directors of the third class, so that each class of Directors shall be increased equally.

In case of any vacancy in any class of Directors through death, resignation, disqualification or other cause, the remaining Directors, by affirmative vote of a majority of the Board of Directors, may elect a successor to hold office for the unexpired portion of the term of the Director whose place shall be vacant, and until the election of a successor.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS

The Board of Directors shall have power to hold their meetings outside of the State of New Jersey at such places as from time to time may be designated by the by-laws or by resolution of the Board. The by-laws may prescribe the number of Directors necessary to constitute a quorum of the Board of Directors, *which number may be less than a majority of the whole number of the Directors.*

Unless authorized by votes given in person or by proxy by stockholders holding at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose, or at an annual meeting, the Board of Directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of the Act concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting, after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors.

Any other officer or employee of the Company may be removed at any time by vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by a vote of the Board of Directors.

The Board of Directors, by the affirmative vote of a majority of the whole board, may appoint from the Directors an executive committee, of which a majority shall constitute a quorum; and, to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the Board of Directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The Board of Directors, by the affirmative vote of a majority of the whole board, may appoint any other Standing Committees, and such Standing Committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

The Board of Directors may appoint not only other officers of the Company, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer, and of the secretary respectively.

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the Company; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of its own capital stock, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the Company's capital stock as provided by law.

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by Statute or authorized by the Board of Directors or by a resolution of the stockholders.

Subject always to by-laws made by the stockholders, the Board of Directors may make by-laws, and, from time to time, may alter, amend, or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the

## FORMS AND PRECEDENTS.

stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

*In Witness Whereof*, we have hereunto set our hands and seals the 23d day of February, 1901.

(Signatures of Incorporators.)

### CERTIFICATE OF INCORPORATION

OF

#### AUDITING COMPANY (NEW JERSEY CHARTER).

ARTICLE 1. The corporate name is :

ARTICLE 2. The objects of the corporation are :

To open, take charge of, maintain, keep, institute, examine, audit, certify to, and guarantee the correctness of the books and accounts of all persons, firms, partnerships, corporations, banks, trust estates, trust companies, Building and Loan Associations, beneficial associations, and all other natural or corporate beings whatsoever.

To furnish all persons, firms, partnerships, and corporations with complete and modern system or systems of auditing and accounting, and to act as controller or auditor thereof, and to issue certificates of efficiency to accountants.

To act as a collecting agency for its patrons, take assignments of claims against debtors of its patrons and others, and sue thereon in its own name, if not prohibited, to act as mercantile agency, to investigate and recommend persons desirous of doing business with its patrons and others, and to issue certificates as to the responsibility of persons, firms, partnerships, and corporations.

To make and keep, by means of photography or otherwise, complete and accurate copies or records of the books and accounts of all persons, firms, partnerships, corporations, trust estates, Building and Loan Associations, beneficial associations, municipalities, and the records of all other natural or corporate beings whatsoever.

Said corporation shall indemnify and save harmless its patrons from any and all costs or expenses, loss or damage, arising out of any error committed by said corporation or its agents in the duties aforesaid, and said corporation hereby expressly waives all rights to any benefits of any statute of limitation now in force or hereinafter to be enacted.

As subsidiary objects and powers the corporation may

Manufacture, purchase, or otherwise acquire, goods, wares, merchandise, and personal property of every class and description, and hold, own, mortgage, sell, or otherwise dispose of, trade, deal in, and deal with the same.

Acquire and undertake the good will, property, rights, franchises, and assets of every kind and the liabilities of any person, firm, partnership, or corporation, either partly or wholly, and pay for the same in cash, stock, or bonds of the corporation or otherwise.

Enter into, make, perform, and carry out contracts of every kind and for any lawful purpose with any person, firm, association, or corporation.

Borrow or raise money without limit as to amount by the issue of, or upon warrants, bonds, debentures, and other negotiable or transferable instruments or otherwise.

Hold, purchase, or otherwise acquire, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock, bonds, debentures, or other evidences of indebtedness created by any other corporation or corporations, and while the owner thereof exercise all the rights and privileges of ownership, including the right to vote thereon.

To apply for, purchase, or otherwise acquire, and to hold, own, use, operate, and to sell, assign, or to otherwise dispose of; to grant licenses in respect of, or to otherwise turn to account any and all inventions, improvements, processes, and trade marks used in connection with, or secured under, letters patent or copyright of the United States of America, or elsewhere or otherwise, and with a view to the

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

working and development of the same, to carry on any business, whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

Conduct business in any of the States, Territories, colonies, or dependencies of the United States, in the District of Columbia, and in any and all foreign countries; to have one or more offices therein, and to hold, purchase, and convey and mortgage real and personal property without limit as to amount therein, but always subject to the laws thereof.

Remunerate any person or corporation for services rendered, or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares of the capital stock of the corporation, or any debentures or other securities of the corporation, or in, or about the formation or promotion of the corporation, or in the conduct of its business.

Subject to the provisions of law, purchase, hold, and reissue the shares of its capital stock.

Do any and all the things herein set forth to the same extent as natural persons might or could do, and in any part of the world.

In general, the corporation may carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and have and exercise all the powers conferred by the laws of New Jersey upon corporations formed under the act hereinafter referred to; it being hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the corporation.

ARTICLE 3. The corporation shall be authorized to issue capital stock to the extent of two hundred thousand dollars (\$200,000), divided into two thousand shares of the par value of one hundred dollars (\$100) each.

ARTICLE 4. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors are expressly authorized:

To hold their meetings, to have one or more offices, and to keep the books of the Company within or without the State of New Jersey, at such places as may be from time to time designated by them; but the Company shall always keep at its principal and registered office in New Jersey, a transfer book in which the transfers of stock can be made, entered, and registered, and also a book containing the names and addresses of the stockholders, and the number of shares held by them respectively, which shall be at all times during the business hours open to the inspection of the stockholders in person.

To determine from time to time whether, and, if allowed, under what conditions and regulations the accounts and books of the Company (other than the stock and transfer books) or any of them shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are, and shall be restricted or limited accordingly.

To make, alter, amend, rescind the by-laws of the Company, to fix the amount to be reserved as working capital, to fix the times for the declaration and payment of dividends, to authorize and cause to be executed mortgages and liens upon the real and personal property of the Company, provided always that the majority of the whole Board concur therein.

By a resolution passed by a majority vote of the whole Board, under suitable provision of the by-laws, to designate two or more of their number to constitute an Executive Committee, which Committee shall for the time being, as provided in said resolution, or in the by-laws, have and exercise any and all the powers of the Board of Directors which may be lawfully delegated in the management of the business and affairs of the Company, and shall have power to authorize the seal of the Company to be affixed to all papers which may require it.

With the consent in writing and pursuant also to the affirmative vote of the holders of the majority of the stock issued and outstanding, at a stockholders' meeting duly called for that purpose, to sell, assign, transfer, or otherwise dispose of the property of the Company as an entirety, provided, always, that the majority of the whole Board concur therein.

The Company may apply and use its surplus earnings or accumulated profits to

## FORMS AND PRECEDENTS.

the purchase or acquisition of property, and to the acquisition and purchase of its own capital stock from time to time, to such extent and in such manner, and upon such terms as its Board of Directors may determine; and neither the property nor capital stock so purchased or acquired shall be regarded as profits for the purpose of declaration or payment of dividends, unless otherwise determined by a majority of the Board of Directors.

The corporation reserves the right to amend, alter, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred to stockholders are granted subject to this reservation.

All disputes between members of the corporation, or between it and its patrons, shall be settled by arbitration; the party claimant delivering personally or by United States mail to the party defendant at his home or place of business, the claim verified by affidavit, to which claim the party defendant shall have sixty days to reply. The party claimant may then appoint an arbitrator, giving written notice thereof to the party defendant, who shall within ten days appoint the second arbitrator, or the first arbitrator shall then make such appointment, both of said arbitrators to be versed in the subject matter of dispute; said two arbitrators shall then appoint the third who shall be learned in the law and shall preside over the Board, whose hearings shall be held at such time and place as may be fixed by the Board. Upon due notice, the parties shall submit in writing to said arbitrators all the facts verified by affidavit, and may be heard by counsel. The decision of said arbitrators, or a majority of them, shall be final and conclusive and without appeal. If the award is not settled or complied with within twenty days, the successful party, if the award is for money, may file the same in the Court having jurisdiction and proceed to execution and sale in the usual course for the enforcement of said award; or, in case the award is in equity, the successful party may file a bill reciting only these proceedings and the award, and praying for the aid of said Court to enforce compliance therewith.

ARTICLE 5. (Clause designating office and agent in New Jersey.)

In accordance with an Act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations" (Revision of 1896) and the Acts amendatory thereof and supplemental thereto, for the purpose of forming a corporation of unlimited duration to do business within and without the State of New Jersey, the undersigned do respectively subscribe for the capital stock with which the corporation will begin business, and do agree to take the number of shares set opposite our names, and have accordingly signed this certificate and affixed our seals thereto.

Name.	No. of Shares taken by each Subscriber.	Amount
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## CERTIFICATE OF INCORPORATION

OF

### BROKERAGE COMPANY (NEW YORK CHARTER).

We, the undersigned, being all persons of full age, all being citizens of the United States and all residents of the State of New York, desiring to form a Stock Corporation pursuant to the provisions of the Business Corporations Law of the State of New York, do hereby make, sign, acknowledge, and file this certificate for that purpose as follows.

#### NAME.

*First.* The name of the proposed corporation is:

#### OBJECTS.

*Second.* The purposes for which it is formed are to buy, sell, negotiate, exchange pledge, trade, and deal in and with shares, stocks, debentures, scrip, bonds, and se-



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

curities of any government, State, or public or private corporation, or any corporate body; to trade and deal in and with real estate, mines, metals, minerals, and oil, cotton, grain, produce, or other commodities; to invest in any or either of the foregoing, and from time to time to change the investments of the Company; to mortgage, pledge, or otherwise charge all or any part of the investments of the Company or its property and rights; to make advances on, sell, or dispose of any property or investments; or to act as agent, factor, or broker for any or either of the corporate purposes; to purchase or otherwise acquire the capital stock, shares, debentures, scrip, bonds, or other evidences of indebtedness of any other corporation, and to issue and exchange its own stock, shares, bonds, debentures, scrip, or other evidences of indebtedness in payment therefor, and while the owner thereof to exercise all the rights of ownership, including the power to vote upon such stock or shares; to purchase, receive, hold, and own mortgages, debentures, shares, and other securities or obligations of any public, private, or municipal corporation, or bonds or other securities or obligations of the Government of the United States, or of any State, district, territory, colony, or dependency of the United States or of any foreign country, State, or colony; to collect and receive, disburse and dispose, of all interest, dividends, accumulations, earnings, and income from, upon, or on account of any bonds, debentures, stocks, shares, securities, contracts, evidences of debt, obligations, or other property held or owned by the corporation thereto; to do any and all lawful acts tending to increase or enhance the value of the property of the Company; to issue stock, shares, bonds, debentures, certificates, scrip, or other corporate obligations, and to secure the payment thereof by mortgage, pledge, or deed of trust of or upon the whole or any portion of the corporate property or funds; to sell, pledge, or otherwise dispose of bonds, debentures, or other corporate obligations for proper and lawful corporate purposes, as and when the Board of Directors shall deem necessary, advisable, or expedient; to promote the corporate business of investment and dealing in securities in all lawful ways; and to receive, collect, transmit, pay out, and disburse funds in the course of its business; and to the extent authorized by law to lease, purchase, or otherwise acquire, hold, use, sell, trade, and deal in and with, assign, pledge, mortgage, transfer, and convey real and personal property of any name or nature, excepting bills of exchange, gold or silver bullion; to deal in foreign exchange, to issue and accept drafts and bills of exchange; to issue promissory notes, scrip, drafts, acceptances, or other corporate obligations, and negotiate the same.

Generally to purchase, take on lease or in exchange, hire, or otherwise acquire any real or personal property, and any rights or privileges which the Company may deem useful, necessary, desirable, proper, or convenient for the purposes of its business or in the development or extension thereof.

### AMOUNT OF CAPITAL STOCK.

*Third.* The amount of capital stock is        dollars (\$)        ). The amount of capital with which the Company will begin business is        dollars.

### NUMBER OF SHARES.

*Fourth.* The number of shares of which the aforesaid capital shall consist is        shares of the par value of \$        each.        shares thereof shall be preferred stock, and        shares thereof shall be common stock. The preferred stock shall be entitled, in preference to the common stock, to cumulative dividends at the rate of        per cent payable yearly, half yearly, or quarterly. Dividends on the common stock shall not be paid except when all dividends to which the preferred stock is entitled at full rate to date are paid or set apart for payment, and both classes of stock shall share equally in any addition to the profits of any fiscal year of the Company in excess of the dividend required to be paid on the preferred stock and        per cent upon the common stock. Such excess dividend shall not be offset against any subsequent dividend upon the preferred stock thereafter, as all dividends shall be the same as if such excess dividends had not been made. Any

## FORMS AND PRECEDENTS.

distribution of assets other than profits shall be paid, as far as the same will go, first upon the preferred stock to the amount thereof, and its                      per cent cumulative dividends that are unpaid if any, less the amount paid thereon, in any previous distribution of such assets; next upon the common stock to the amount of the par thereon, less the amount, if any, paid thereon in any previous distribution of such assets, and then upon the two classes of stock equally per share.

### PRINCIPAL OFFICE.

*Fifth.* The principal office of this Corporation is to be located in the Borough of Manhattan, in the City, County, and State of New York.

### DURATION.

*Sixth.* Its duration is to be perpetual.

### NUMBER OF DIRECTORS.

*Seventh.* The number of its Directors is to be

### DIRECTORS FOR THE FIRST YEAR.

*Eighth.* The names and post-office addresses of its Directors for the first year are as follows:

Names.

Post-Office Addresses.

### SUBSCRIBERS TO CAPITAL STOCK.

*Ninth.* The names and post-office addresses of the subscribers, and the number of shares which each agrees to take in the corporation are as follows:

*Tenth.* The Directors need not be stockholders of the corporation. A majority of the stockholders shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board, but a less number may adjourn such meeting. All Directors shall hold office until the election of their successors, and Directors shall not be subject to removal during their respective terms.

Vacancies in the Board of Directors may be filled by the remaining Directors, provided there is present at the meeting at which such vacancy is filled a majority of the full Board of Directors as authorized by the certificate of incorporation.

The Directors may hold their meetings, have an office, and keep the books of the corporation, except the stock book, outside the State of New York.

The Board of Directors by the affirmative vote of a majority of the whole Board may appoint an Executive Committee of three members of the Board, of whom a majority shall constitute a quorum. Such Executive Committee shall have any and all powers of the full Board of Directors which may be lawfully delegated. The term of office of each member of such Committee shall continue until the expiration of his term as Director and until his successor shall be elected: vacancies in this committee shall be filled by the Board of Directors.

By-laws may be made by the Board of Directors except as otherwise provided by law, and may be altered in such manner as may be therein provided.

Stockholders shall have no right except as conferred by statute or by the by-laws of the corporation to inspect any books, papers, or accounts of the corporation. The transfer books of the corporation may be closed by order of the Board of Directors or the Executive Committee for thirty days or any shorter time, before any meeting of the stockholders and until the day after the final adjournment of such meeting.

*In Witness Whereof*, we have made, signed, acknowledged, and filed this certificate.

Dated, February , 190 .

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

### CERTIFICATE OF INCORPORATION.

#### TRUST AND INVESTMENT COMPANY (DELAWARE CHARTER).

THIS IS TO CERTIFY, that the undersigned do hereby associate themselves to establish a corporation under and by virtue of the provisions of an Act of the General Assembly of the State of Delaware, entitled "An Act Providing a General Corporation Law," and do severally agree to take the number of shares of capital stock as hereinafter stated, and that

#### *First.*

The name of the corporation is

COMPANY.

#### *Second.*

The principal office or place of business of the corporation in the State of Delaware is to be located in the City of Wilmington, New Castle County, and said office is to be registered with

#### *Third.*

The nature of the business and the objects and purposes proposed to be transacted, promoted, or carried on by the corporation are as follows :

To carry on a banking and trust company business, and in connection therewith to discount bills, notes, and other evidences of indebtedness ; to receive and pay out, with or without interest, or receive on special deposit money, bullion or foreign coin, stocks, bonds, or other securities ; to buy and sell foreign and domestic exchange, gold and silver bullion, foreign coins, bonds, stock, bills of exchange, notes, and other negotiable paper ; and to lend money on personal security. To act as trustee for individuals and corporations.

To carry on and undertake any business, undertaking, transaction, or operation commonly carried on or undertaken by capitalists, promoters, financiers, contractors, merchants, commission men and agents, and in the course of such business to draw, accept, endorse, acquire, and sell all or any negotiable or transferable instruments and securities, including debentures, bonds, notes, and bills of exchange. To issue on commission, subscribe for, acquire, hold, sell, exchange, and deal in shares, stocks, bonds, obligations, or securities of any public or private corporation, government, or municipality, and the Company shall have express power to hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock, bonds, debentures, or other evidences of indebtedness created by any other corporation or corporations, and while the owner thereof to exercise all the rights and privileges of ownership, including the right to vote thereon.

To form, promote, and assist financially or otherwise companies, syndicates, partnerships, and associations of all kinds, and to give any guarantee in connection therewith or otherwise for the payment of money, or for the performance of any obligation or undertaking. To acquire, improve, manage, work, develop, exercise all rights in respect of, lease, mortgage, sell, dispose of, turn to account and otherwise deal with property of all kinds, and in particular business concerns and undertakings. To act as fiscal agent for persons, firms, and corporations.

To buy, or otherwise acquire, to hold, own, mortgage, pledge, sell, assign, and transfer, or otherwise dispose of, and to invest, trade in, and deal in any goods, wares, and merchandise and property of every class and description, including patents and patent rights, inventions or other improvements, trade marks, options, shares or rights in corporations, real property of any description, including mines, railroads, and also bonds, mortgages, securities of any kind or description, or other evidences of indebtedness, and investments or investment securities of any kind or description whatsoever, to act as the agent for the sale or purchase of any of the same, or for any other purpose connected with any of the said above-described powers ; to promote corporate enterprises of any kind, including industrial enter-

## FORMS AND PRECEDENTS.

prises, railroads, mines, real estate companies, banking institutions, and all businesses or enterprises of any character, and to own and operate or finance the same; to aid in any manner any corporation or enterprise in which the Company is interested; to endorse, underwrite, or guarantee stock, securities, or undertaking of any corporation or persons.

To raise money by the issue of shares or otherwise, and to invest the moneys so raised in the purchase of, or otherwise to acquire and hold any of the investments following, that is to say, any stocks, bonds, debentures, shares, scrip, or securities issued, or having any guarantee by any government, municipality, trust, local authority, or other body, incorporated or unincorporated, public or private, of the United States, or in any country or State under the protection of the United States, or any stock, bonds, debentures, shares, scrip, or securities issued or having any guarantee by any corporation or company incorporated, constituted or carrying on business in the United States or elsewhere.

To borrow or raise money by the issue or sale of any bonds, mortgages, debentures, or debenture stock of the Company, and to invest any money so raised in any such investments as aforesaid.

To acquire any such investments as aforesaid by original subscription, underwriting, participation in syndicates or otherwise, and whether or not fully paid up, and to make payments thereon as called for, or in advance of calls or otherwise, and to underwrite or subscribe for the same conditionally or otherwise, and either with a view to investment or for re-sale or otherwise, and to vary the investments of the Company, and generally to sell, exchange, or otherwise dispose of, deal with, and turn to account any of the assets of the Company.

To negotiate loans, to offer for public subscription, or otherwise aid or assist in placing any such investments as aforesaid; to give any guarantee in relation to any such investments issued by or acquired through the Company or otherwise.

To offer for public subscription any shares or stock in the capital of, or debentures or debenture stock or other securities of, or otherwise to establish or promote, or concur in establishing or promoting, any company, association, undertaking, or public or private body.

To guarantee the payment of dividends or interest on any stock shares, debentures, or other securities issued by, or any other contract or obligation of any such company, association, undertaking, or public or private body.

To purchase, lease, hire, or otherwise acquire real and personal property, improved and unimproved, of every kind and description, and to sell, dispose of, lease, convey, and mortgage said property, or any part thereof; to acquire, hold, lease, manage, operate, develop, control, build, erect, maintain for the purposes of said Company, construct, reconstruct, or purchase either directly or through ownership of stock in any corporation, any lands, buildings, offices, stores, warehouses, mills, shops, factories, plants, gas houses, machinery, rights, easements, permits, privileges, franchises, and licenses, and all other things which may at any time be necessary or convenient in the judgment of the Board of Directors for the purposes of the Company. To sell, lease, hire, or otherwise dispose of the lands, buildings, or other property of the Company or any part thereof.

To hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock and bonds, debentures, or other evidences of indebtedness created by other corporation or corporations, and while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

To conduct its business, and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage, and convey real and personal property in or out of this State, and in such place and places in the several States, Territories, colonial possessions, or territorial acquisitions of the United States, as shall from time to time be found necessary and convenient for the purposes of the Company's business.

*In General*, to carry on any other business in connection therewith, whether manufacturing or otherwise, and with all the powers conferred by the laws of Delaware under the act hereinbefore referred to.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

It is the intention that the objects specified in the third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause or paragraph in this charter, but that the objects specified in each of the clauses of this paragraph shall be regarded as independent objects.

### *Fourth.*

The amount of the total authorized capital stock of the corporation is dollars (\$ ), divided into shares of the par value of dollars each. The amount of capital with which the corporation will begin business is dollars.

### *Fifth.*

The names and places of residence of the original subscribers to the capital stock are :

Names.	Residences.	No. of Shares.
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### *Sixth.*

The corporation shall have perpetual existence.

### *Seventh.*

The private property of the stockholders shall not be subject to corporate debts.

### *Eighth.*

The officers and persons by whom the affairs of the corporation are to be conducted are its Directors, who may act through a President, Vice-President, Secretary, and Treasurer, and such assistants to them and subordinate officers, agents, and employes as may be selected pursuant to the by-laws of the corporation, the resolution of said Directors, or authority given by them.

Directors shall be elected at the principal office or place of business of the Company at the annual election to be held by the stockholders on the first in in each year between the hours of A. M. and P. M.

### *Ninth.*

The Board of Directors shall have power without the assent or vote of the stockholders to make, alter, amend, and repeal the by-laws of this corporation, to authorize and cause to be executed mortgages and liens upon the real and personal property of this corporation.

The Directors shall, from time to time, determine whether and to what extent and at what times and places and under what conditions the accounts and books of the corporation or any of them shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book of the corporation except as conferred by statute or authorized by the Directors, or by a resolution of the stockholders.

The Directors shall have power to hold their meetings, and to keep the books of the corporation (except the stock and transfer books) outside of the State, at such places as may be from time to time designated by them.

The corporation may conduct its business in the State of Delaware, in other States, the District of Columbia, the Territories and Colonies of the United States and in foreign countries, and may have one or more offices out of this State, and may hold, purchase, mortgage, lease, and convey real and personal property out of the State of Delaware.

Witness our hands and seals this day of , 190 .

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
In presence of :  
\_\_\_\_\_  
\_\_\_\_\_

FORMS AND PRECEDENTS.

CERTIFICATE OF INCORPORATION

OF

OIL COMPANY (SOUTH DAKOTA CHARTER).

KNOW ALL MEN BY THESE PRESENTS : That we, the undersigned,  
, for ourselves, our associates and successors, have associated  
ourselves together for the purpose of forming a corporation under and by virtue of  
the statutes and laws of the State of South Dakota, and we do hereby certify and  
declare as follows, to wit :

*First.*

The name of this corporation shall be :

*Second.*

The purposes for which and for each of which the corporation is formed are as  
follows :

To purchase or otherwise acquire in the State of \_\_\_\_\_ and other parts of  
the world, lands containing or believed to contain petroleum and other oil springs  
or deposits.

To carry on the business of producing, refining, storing, supplying, and distribu-  
ting petroleum products in all its branches ; also to refine, store, and sell vegetable  
oils and animal oils. To construct, purchase, lease, operate, and maintain pipe-  
lines and tanks for the distribution and storage of oil.

To purchase, sell, exchange, lease, or otherwise acquire real or personal property  
of all kinds in the United States of America or elsewhere, and in particular lands,  
oil wells, refineries, mines, mining rights, minerals, or buildings, machinery,  
plants, stores, licenses, concessions, rights of way, light or water, and any rights or  
privileges which may seem to the Directors convenient with reference to the busi-  
ness of the Company, and, whether for the purpose of re-sale, realization, or other-  
wise, to manage, develop, lease, mortgage, or otherwise deal with the whole or any  
part of such property or rights.

To prospect, explore, develop, maintain, and carry on all or any lands, wells,  
mines, or mining rights, minerals, ores, works, or other properties from time to  
time in the possession of the Company in any manner deemed desirable ; to erect  
all necessary or convenient refineries, mills, works, machinery, laboratories, work-  
shops, dwelling houses for workmen and others, and other buildings, works, and  
appliances, and to aid in or subscribe towards or subsidize any such objects.

To clear, manage, farm, cultivate, plant, and otherwise explore, work, or improve  
any land which or any interest in which may belong to the Company ; and to deal  
with or otherwise turn to account any farm or other products of any such land.

To construct, maintain, alter, make, acquire, charter, lease, hire, or work private  
railways, tramways, wagons, private telegraph lines, telephones, steamers, ships,  
pipe lines, docks, reservoirs, wells, aqueducts, works, private roads, streets, hotels,  
dwelling houses, factories, shops, stores, gas works, pier barges, boats, wharves,  
and other works, plants, or machinery of every description ; and to contribute to  
the cost of making, providing, carrying on, and working the same ; to enter into  
contracts or arrangements with any municipal or other body, corporation, company,  
or person, as to interchange of traffic, running powers, joint works, or otherwise  
that may seem to be expedient.

To carry on business as merchants, refiners, warehousemen, chemists, store-  
keepers, carriers, shipowners, builders, or contractors in the United States of  
America or elsewhere, and any other business that may seem directly or indirectly  
conducive to the development of any property of the Company or any property in  
which it is interested, or to benefit the Company ; to acquire by grant, purchase, or  
otherwise, concessions of any property or privileges from any government or from  
any authority, supreme, municipal, or otherwise, and to perform and fulfil the  
conditions thereof.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

To apply for, obtain, purchase, or otherwise acquire any patents, brevets, inventions, licenses, concessions, and the like in the United States of America or elsewhere, conferring an exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention or process, secret or otherwise, that may seem capable of being used for any of the purposes of the Company, or the acquisition of which may seem calculated directly or indirectly to benefit the Company, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account the property, rights, and information so acquired, with a view to the working and development of the same, and to carry on such business, whether manufacturing or otherwise, as may seem calculated directly or indirectly to effectuate these objects, provided that none of the powers enumerated above shall be construed as authorizing the Company to engage in any business that comes within the provisions of special statutes in South Dakota.

To hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock and bonds, debentures or other evidences of indebtedness created by any corporation or corporations, and while the holder thereof to exercise all the rights and privileges of ownership, including the right to vote thereon.

To have one office, to carry on all or any part of its operations and business, and unlimitedly and without restriction, except as limited by law, to hold, purchase, mortgage, lease, and convey real and personal property, and to conduct its business in any State or Territory of the United States and in any foreign country or place, but subject always to the laws thereof.

### *Third.*

The place where the principal business of this corporation shall be transacted is in the City of \_\_\_\_\_, State of South Dakota; but the corporation may have an office without this State at the City of \_\_\_\_\_; and any meetings of directors, incorporators, or stockholders of this Company may be held at either of said offices or places of business; and the books of this corporation may be kept at either of said offices or places of business; and any incorporator or stockholder entitled to be present and to vote at any organization or stockholders' meeting, may be represented and vote at such meeting by proxy in writing.

The domiciliary office of this corporation shall be at the office of the \_\_\_\_\_ in the aforesaid City of \_\_\_\_\_, South Dakota.

### *Fourth.*

The term for which this corporation shall exist shall be twenty years with such right of renewal for other and similar periods as may now or hereafter be permitted under the laws of South Dakota.

### *Fifth.*

The number of Directors of this corporation shall be \_\_\_\_\_, and each Director shall hold at least one share of stock. The names and residences of the Directors who are to serve for the first year or until their successors are elected are as follows:

Names.

Residences.

### *Sixth.*

The amount of the capital stock of this corporation shall be and is (\$ \_\_\_\_\_), divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ each.

*In Witness Whereof*, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

## FORMS AND PRECEDENTS.

### ARTICLES OF INCORPORATION

#### MINING COMPANY (NEVADA CHARTER).

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Nevada. And we hereby certify:

##### *First.*

The name of this corporation is

COMPANY.

##### *Second.*

The location of the principal office of this corporation in the State of Nevada is at \_\_\_\_\_ of \_\_\_\_\_, in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Nevada.

##### *Third.*

The objects for which this corporation is formed are:

To purchase, locate, take on lease, or otherwise acquire any mines, mining rights, and lands in any part of the United States, and any interest therein, and to operate, work, and develop the same. Also to mine, mill, reduce, smelt, and prepare for market gold, silver, copper, and other ores, minerals, and metallic compounds. Also to carry on quartz, placer, and lode mining of all kinds and descriptions.

To construct, purchase, or otherwise acquire, maintain, and operate flumes, water works, and irrigation ditches for mining purposes. Also to purchase, construct, lease, operate, and maintain electric light and power plants, buildings, constructions, machinery, appliances, and equipments; to purchase, construct, lease, operate, and maintain private tramways, private railways, and private roadways.

To buy, sell, and generally deal in, store, carry, and transport all kinds of goods, wares, and merchandise, provisions, and supplies.

To acquire by discovery, lease, license, bond, option, purchase, franchise, gift, devise, conveyance, agreement, or otherwise, and to hold, possess, enjoy, develop, and operate placer, quartz, or lode gold, silver, or other mines, and tunnels and tunnelling and mining property, and any right, title, or interest therein, as also such lands, mills, mill sites, tunnel sites, buildings, fixtures, dump and dump rights, flumes, pipes, and pipe lines, as may be deemed by the Directors for the time being to be necessary or proper for the proper working, development, exploration, or enjoyment of the Company's properties.

Also to treat or reduce ores or minerals, to receive, ship, or transport ores, minerals, or supplies to or from any part of the workings upon the Company's property, or for the accomplishment of any other purpose for which the Company is formed.

To hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock, and bonds, debentures, or other evidences of indebtedness created by other corporation or corporations, and while the holder thereof to exercise all the rights and privileges of ownership, including the right to vote thereon.

To conduct its business and have one or more offices, and unlimitedly and without restriction to purchase, hold, lease, mortgage, and convey real and personal property in or out of this State, and in such place or places in the several States and Territories of the United States, colonial possessions, or territorial acquisitions of the United States, and in foreign countries, as shall from time to time be found necessary and convenient for the purposes of the Company's business.

The Directors shall have the power to appoint three of their number as an Executive Committee. Such Executive Committee when so appointed shall have and exercise all the powers of the full Board of Directors. The Directors shall



## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

have power to adopt, repeal, or amend by-laws without referring the same to the stockholders for approval or rejection.

### *Fourth.*

The total authorized capital stock of this corporation shall be \_\_\_\_\_ dollars, divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each.

The amount of authorized stock subscribed and paid up is \_\_\_\_\_ dollars. The capital stock shall be common stock, and the terms upon which such stock is created is that it shall be issued for property to the full par value thereof, and such stock shall be issued as fully paid up, and the capital stock of this corporation, after its full par value has been fully paid up, or which has been issued as fully paid, shall not be subject to assessment to pay debts of the corporation.

### *Fifth.*

The names and post-office addresses and residences of each of the original subscribers to the capital stock of this corporation, and the amount subscribed by each are as follows :

Name.	P. O. Address and Residence.	No. of Shares.	Amount Subscribed.
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### *Sixth.*

The period of existence of this corporation is unlimited.

### *Seventh.*

The members of the governing board of this corporation shall be styled Directors, and shall be \_\_\_\_\_ in number.

In Witness Whereof, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 190 .

## CERTIFICATE OF INCORPORATION

### OF

### COAL COMPANY (WEST VIRGINIA CHARTER).

I. We, the undersigned, agree to become a corporation by the name of \_\_\_\_\_ COMPANY.

II. The principal place of business and chief works of said corporation shall be located in the county of \_\_\_\_\_, State of \_\_\_\_\_.

III. The objects and purposes for which said corporation is formed are as follows :

To purchase, lease, or otherwise acquire, and to own, develop, and mine, cannel, bituminous, and other coal in the State of \_\_\_\_\_ and elsewhere, and to purchase, lease, hold, and sell surface lands and other real estate necessary in, or incident to, said business, and to buy, sell, import, export, and generally deal in cannel, bituminous, and other coal in said State of \_\_\_\_\_ and elsewhere in the United States or in any foreign country.

To purchase, lease, or otherwise acquire, construct, maintain, and operate all necessary private railroads, sidings, and tramways, and to manufacture, buy, sell, import, export, and generally deal in coke, wood, lumber, and any and all by-products of cannel, bituminous, and other coal, and to purchase, lease, build, sell, maintain, and operate stores, shops, warehouses, dwellings, and all other buildings and structures, and to buy, sell, and generally deal, at wholesale or retail, in merchandise of all kinds and descriptions necessary or convenient for carrying on its said business.

To purchase or otherwise acquire, and to hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock and bonds, debentures, or other evidences of indebtedness created by other corporation or corporations, and

## FORMS AND PRECEDENTS.

while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

To conduct its said business and have one or more offices, and unlimitedly and without restriction to purchase, hold, lease, mortgage, and convey real and personal property in or out of said State of \_\_\_\_\_, and in such place and places in the several States and Territories of the United States, its colonial possessions or territorial acquisitions, and in foreign countries, as shall from time to time be found necessary and convenient for the purposes of the business of said corporation.

IV. The amount of the total authorized capital stock of said corporation shall be \_\_\_\_\_ dollars (\$ \_\_\_\_\_), which shall be divided into \_\_\_\_\_ shares of the par value of \_\_\_\_\_ dollars each; of which authorized capital stock the amount of \_\_\_\_\_ dollars has been subscribed, and the amount of \_\_\_\_\_ dollars has been paid.

V. The names and post-office addresses of all the incorporators and the number of shares of stock subscribed for by each are as follows:

Names.	Post-Office Addresses.	No. of Shares.
VI. Said corporation is to expire on the _____ day of _____.		
Given under our hands this _____ day of _____,		A. D. 190 .

## CERTIFICATE OF INCORPORATION

OF

### TRANSPORTATION COMPANY (ARIZONA CHARTER).

THIS IS TO CERTIFY that we, \_\_\_\_\_, have this day associated ourselves together for the purpose of forming a corporation under the laws of Arizona, and for that purpose do adopt the following charter:

*First.* The name of this corporation is the \_\_\_\_\_ Company.

*Second.* This Company shall keep a local office at \_\_\_\_\_, Arizona, and may keep other principal offices and places of business at \_\_\_\_\_, State of \_\_\_\_\_, and at such other places and in such States as the Board of Directors may establish, at which place or places all incorporators', stockholders', and Directors' meetings may be held, and all corporate business be transacted.

*Third.* The amount of the capital stock of this corporation shall be \$ \_\_\_\_\_, divided into \_\_\_\_\_ shares of the par value of \$ \_\_\_\_\_ each, and said capital stock shall be paid at such time as the Board of Directors may designate, in money, property, labor, good will, or any other valuable right or thing.

*Fourth.* The objects for which this corporation is formed are, as principals, agents, or otherwise, to do in any part of the world any and every of the things herein set forth to the same extent as natural persons might or could do, and in furtherance and not in limitation of the general powers conferred by laws of Arizona, it is hereby expressly provided that the corporation shall have the following powers:

(a) To manufacture, purchase, or otherwise acquire, and to hold, own, mortgage, pledge, and to sell, assign, or otherwise dispose of, to invest, trade, deal in, or deal with goods, wares, merchandise, and property of every class and description.

(b) To apply for, purchase, or otherwise acquire, and to hold, own, use, operate, and to sell, assign, or otherwise dispose of, to grant licenses in respect of, or otherwise turn to account any or all inventions, improvements, formulæ, and processes used in connection with or secured under Letters Patent, Copy Rights, or Trade Marks of the United States, or elsewhere, or otherwise, and with a view to developing the same, to carry on any other business, whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

(c) To purchase or otherwise acquire, and to hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the shares of capital stock or other evidence of indebtedness created by other corporation or corporations, and while the

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

holders of such stock, to exercise all the rights and privileges of ownership, including the right to vote thereon.

(d) Generally to purchase, take on lease or in exchange, hire, or otherwise acquire, any real and personal property, and any rights, privileges, or franchises which the corporation may think necessary or convenient for the purpose of its business, and, in full, to do any or all things in any part of the world not prohibited by the laws of Arizona.

(e) To construct, hire, purchase, and operate steamboats and other vessels of any class, and especially the construction of steamboat hulls and barges after and upon the plans of the new method of composite construction; to establish and maintain lines or regular services of steamboats or other vessels on the River and its tributaries; and generally to carry on the business of shipowners, and to enter into contracts for the carriage of mails, passengers, goods, and merchandise by any means, either by its own vessels, railways, and conveyances, or by or over the vessels, conveyances, and railways of others; to insure against loss by fire, flood, or other calamity, the cargo carried or transported upon the Company's steamboats or other vessels; to construct, purchase, take on lease, or otherwise acquire and work any railway wharf, pier, dock, building, or works capable of being advantageously used in connection with the business of the Company as a shipping company, and in connection with any of the objects aforesaid, to carry on the business of a railway company, railway contractors, ship builders, engineers, manufacturers of machinery and car builders; to acquire concessions or licenses for the establishment and working of lines of steamboats and other vessels between any ports of the world, or for the formation or working of any railway, wharf, pier, dock, or other works, or for the working of any public conveyance.

(f) To build, make, operate, maintain, buy, sell, deal in and with, own, lease, pledge, and otherwise dispose of steamboats and vessels of every nature and kind whatsoever, together with all materials, articles, tools, machinery, and appliances entering into, or suitable and convenient for the construction or equipment thereof, and together with engines, boilers, machinery and appurtenances of all kinds, and tackle, apparel, and furniture of all kinds; the transportation of goods, merchandise, and passengers upon land or water, building, repairing and designing houses, structures, vessels, ships, boats, wharves, docks, dry docks, railroads, engines, cars, machinery, and all other equipment; constructing, maintaining, and operating railroads; to build, construct, repair, maintain, and operate water, gas, and electrical works, tunnels, bridges, viaducts, canals, wharves, piers, and like works of internal improvement or public use or utility; to own, operate, and maintain steamboat lines, vessel lines, or other lines of transportation.

(g) To carry on the business of cold storage and warehousing and all the business necessarily or impliedly incidental thereto; and to further carry on the business of general warehousing in all its several branches; to construct, hire, purchase, operate, and maintain any conveyances for the transportation in cold storage or otherwise, by land or by water, of any and all products, goods, or manufactured articles; to issue certificates and warrants, negotiable or otherwise, to persons warehousing goods with the Company, and to make advances or loans upon the security of such goods or otherwise; to manufacture, sell, and trade in all goods usually dealt in by warehousemen; to construct, purchase, take on lease or otherwise acquire any wharf, pier, dock, or works capable of being advantageously used in connection with the shipping and carrying on of other business of the Company; and generally to carry on and undertake any business undertaking, transaction, or operation commonly carried on or undertaken by warehousemen, and any other business which may from time to time seem to the Directors capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value of, or render profitable any of the Company's properties or rights.

(h) To own, operate, and maintain sugar plantations, and to grow, purchase, manufacture, refine, and dispose of sugar, molasses, and melada, and all lawful business incidental thereto.

(i) To carry on the business of mining, milling, concentrating, converting,

## FORMS AND PRECEDENTS.

smelting, treating, preparing for market, manufacturing, buying, selling, exchanging, and otherwise producing and dealing in coal, gold, silver, copper, lead, zinc, brass, iron, steel, and in all kinds of ores, metals, and minerals, and in the products and by-products thereof of every kind and description, and by whatsoever process the same can be or may hereafter be produced; and generally and without limit as to amount, to buy, sell, exchange, lease, acquire, and deal in lands, mines, and mineral rights and claims, and in the above specified products, and to conduct all business appurtenant thereto.

(i) The corporation shall also have power to conduct its business in all its branches, and unlimitedly to hold, purchase, mortgage, and convey real and personal property in any State, Territory, or colony of the United States and in any foreign country or place.

*Fifth.* The affairs of this corporation shall be conducted by a President and Board of Directors, who shall be elected annually, as the by-laws shall provide, and a voting power of at least 51 per cent of the capital stock shall be pooled, and that right vested in the incorporators hereof, and that said right to endure for the lifetime of the Company, and the Board of Directors can without further authorization make, alter, amend, and rescind the by-laws, and amend the articles in any of the particulars herein of this Company, and to fix the amount to be reserved as working capital.

*Sixth.* This corporation is formed to endure for twenty-five years after its articles are duly executed, but its charter rights may be renewed before its charter expires, from time to time, for periods not exceeding twenty-five years at a time, perpetually.

*Seventh.* The private property of the stockholders of this corporation shall be and is hereby made forever exempt from all liability for its debts or obligations, and there shall be no individual liability on the part of either Directors or stockholders.

*Eighth.* The capital stock of this corporation shall be and is hereby made full paid, and forever non-assessable by this corporation for any purpose. In accepting property in exchange for stock the judgment and appraisal of the Directors shall be final and conclusive.

*Ninth.* The Board of Directors shall, as soon as practicable after the organization of the Company, instruct the Treasurer to set apart a certain sum of money, at such times as will jointly be agreed upon, which sum of money shall be held by the Treasurer, as and for a Sinking Fund to be utilized for the replacing of any of the Company's boats or properties of any description that may meet with disaster, or for general repairs in any way upon the Company's holdings; to anticipate the payment of any obligations which may not be classed as regular expenses; to meet any contingency of any kind and thus make absolutely certain at all times the solvency of the Company; to insure against loss the cargo transported upon the Company's steamboats or other vessels; to apply to any and all of the things which the Board of Directors may in their right determine.

*Tenth.* All stockholders of this company shall have the right to inspect the stock and transfer books of this corporation in the presence of the President and Board of Directors, after proper reasons have been given for the request to so examine.

*Eleventh.* Should a stockholder so desire, a proxy can be given to the President or any member of the Board of Directors, and such person will act for him the same as if he himself were present.

*Twelfth.* It will not be lawful for this Company to join with, or pool its interests with any other corporation of any kind or nature whatsoever, or have as a member of its Board of Directors any officer of any other company; thus stringently excluding a representative of any shareholder or shareholders of a competing company, or any company, whether on land or water, from having any voice whatever in the management or direction of this Company.

*Thirteenth.* This Company will not permit the listing of the stock of this corporation on any exchange created for the sole purpose of the bartering and selling of the securities of corporations.

*Fourteenth.* There shall be no greater amount of indebtedness incurred, either directly or indirectly, by the Board of Directors of this Company, at any time, than shall exceed in amount or be equal to two-thirds of the capital stock.

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

*Fifteenth.* Without in any particular limiting any of the objects and powers of this corporation it is hereby expressly declared and provided, that should it become necessary and decided by those in control, this corporation shall have power to issue bonds in payment for property purchased or acquired by it, or for any other object in and about its business; and said bonds after issue and before their maturity, can be retired by the decision and vote of a majority of the holdings of stock, and new certificates of stock can be issued to the stockholders at par.

*In Witness Whereof*, we have hereunto set our hands and seals this       day of  
A. D. 190 .

Signed, sealed, and delivered  
in the presence of

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### SUGGESTIONS RELATIVE TO THE DRAFTING OF CHARTERS AND THE PREPARATION OF MINUTES FOR THE ORGANIZATION MEETINGS OF CORPORATIONS.

In presenting a few suggestions relative to the incorporation and organization of corporations it is assumed that a choice has been made of some particular State from which a charter is to be obtained, and that a duty has been imposed upon the attorney of drafting the charter under the laws of such State and organizing the corporation ready for the transaction of business thereunder. The suggestions that follow are made more with a view to utilizing to the best advantage the forms and precedents to be found in the present work rather than with the hope of presenting anything particularly new or original along this line.

### THE DRAFTING OF THE CHARTER.

First, ascertain whether all the purposes the insertion of which in the charter is desired by the client may be embodied in one charter. By reference to the "Synopsis Digest" contained in Part II. of this work, this question can be readily answered. Next, turn to the forms for charters of the various States and Territories found in Part III. of the present work, and make use of the skeleton form therein found, for drafting a charter under the laws of the particular States in which this particular charter is sought. The only clauses of the charter to which particular reference need be made here are what are known as the "Object Clause," the "Preferred Stock Clause," and the "Clause for the Regulation of the Internal Affairs of the Corporation."

In drafting the first of these, the "Object Clause," reference should be first had to the "Specific Object Clauses" found in Part III. pp. 475-514, of this work. Forms for drafting the more common of such specific "Object Clauses" will be found therein. Next, it will often be found convenient and useful to add to the "Specific Object Clauses" certain "General Object Clauses;" such, for example, as those permitting a corporation to purchase and hold its own stock and stock in other corporations as well, and to acquire patents, patent rights, trade marks, etc., and to hold real and personal property without limit, and to transact business in other States and Territories and foreign countries. Sometimes, too, it is of advantage to insert a clause authorizing the corporation to acquire an existing business or to engage in a general merchandise business. Such forms will also be found in Part III. p. 515, herein.

Next, attention is called to the "Preferred Stock Clauses," forms for which will be found on pp. 517-518 of Part III. herein. In connection with the clause for the regulation of the internal affairs of a corporation, attention should first be directed towards ascertaining whether the insertion of such a clause is permitted under the laws of the particular Commonwealth from which the charter is to be procured.

## FORMS AND PRECEDENTS.

(See Part III. Table X, p. 654.) Examples of such clauses will be found on pp. 516-517 of Part III. herein. A stock subscription agreement should ordinarily be signed by all of the incorporators before the articles of incorporation are signed. (See Part III. p. 594.)

Finally, see that the requisite number of incorporators sign the articles and acknowledge their execution (when the same is required) before a notary public or other officer authorized to take acknowledgments. In some of the States, notably New Jersey, if the articles are acknowledged without the State, a certificate must be obtained certifying to the officer's due appointment as well as to his authority to take such acknowledgments.

## THE PROCURING OF THE CHARTER.

Ordinarily three copies of the charter should be prepared: the first of these should be signed and acknowledged by each of the incorporators, and becomes the original; the second is for the purpose of filing (when duly certified) in local county office (when the same is required by statute), and the third — after being properly certified — remains the property of the corporation.

In most of the Commonwealths at the time the charter is presented to State officials for filing and recording, it must be accompanied by a sufficient remittance to cover not only the organization tax but the filing and recording fees as well. (See Part II. pp. 211-474.) After the certificate of incorporation is issued by the proper State officials, a certified copy thereof should (when the same is required by statute) be promptly filed in the proper county office.

## ORGANIZING THE CORPORATION.

(See Composite Form of Minutes and By-Laws, Part III. pp. 512-524.)

The organization meeting of the corporation must be held within the domiciliary State of the corporation unless such meetings are expressly authorized by statute to be held without such domiciliary State. The most convenient practice is for the incorporators to sign a written waiver of notice fixing the time and place of the meeting. (See Part III. p. 538.) If other stockholders than the incorporators have signed the preliminary stock subscription agreement, they also must sign the written waiver here referred to. The meeting organizes by the election of a Chairman and a temporary Secretary. Either the charter itself (if one is issued) or, in lieu thereof, a certified copy of the certificate of incorporation should be presented and entered at length in the minutes.

The By-Laws should next be adopted section by section and entered in the minutes. If the certificate of incorporation names the first Board of Directors, it is not necessary to elect a new Board at the organization meeting. Where such Directors are not named in the certificate of incorporation, the next order of business is the election of Directors. When required by statute (or when not required, if the incorporators so desire), Inspectors of Election should be appointed and sworn. If the persons so chosen as Directors are not subscribers to the capital stock of the corporation, they may become qualified either by subscribing for stock or by having one of the incorporators who is a subscriber to the capital stock assign his stock subscription to them. (See Part III. p. 598.)

If it is the intention of the corporation to take over certain property (either real or personal) in exchange for its capital stock, the following suggestions may be made: Let some party who is not an officer or director in the corporation offer to enter into an agreement with the latter relative to the sale of such property for stock. (See Part III. pp. 598-599.) Then draft the minutes of the incorporators' meeting, so that provision is made for the acceptance of such offer in exchange for

## INCORPORATION AND ORGANIZATION OF CORPORATIONS.

a certain specified number of shares in the corporation. The resolution thus passed may be so framed as to operate as a payment of the capital stock subscribed for by the incorporators. (See Part III. pp. 587, 591.) Under this resolution the matter is referred to the Board of Directors for more formal action. The Board may, if it sees fit, authorize the execution of a formal agreement covering the transfer of such property for stock in substantially the form set forth in Part III. pp. 598-599. This secures the issuance of the capital stock either in whole or in part as full-paid and non-assessable, providing the Directors in appraising the property are not guilty of fraud or gross overvaluation in appraising the same. Next, if it is desired to place some of this stock so that it may be sold to procure working capital for the corporation, the party to whom it is issued may transfer the same in trust to the corporation for that purpose. (See Part III. pp. 599-600.) This stock, when so transferred, can be sold under the order of the Board of Directors of the Corporation, at such times and for such prices as they may deem proper; and parties purchasing such stock will then receive the same free from any future liability for unpaid instalments thereon, even though they have purchased such stock at considerably less than par.

The seal of the Company should be adopted at this meeting. It is not necessary for the incorporators to be present in person at the meeting. They may all be represented by proxy if desired. Immediately after adjournment of the incorporators' organization meeting, or later if more convenient, the Directors should meet pursuant to a written waiver of notice signed by all of them fixing the time and place of such meeting. (See Part III. p. 591.) The Board then proceeds to elect such officers of the Company as are provided for in the By-Laws adopted at the incorporators' meeting. If the By-Laws provide for an Executive Committee, they should be appointed at the same time the officers are elected. A form of stock certificate should also be passed upon and approved, and the Secretary given authority to procure necessary stock certificates, corporate books, seal, etc. It will be found convenient at this meeting to pass a resolution authorizing the opening of a bank account designating the bank therein and the officers of the corporation by whom checks and drafts shall be signed. (See Part III. pp. 604, 605.) Where it is necessary to provide for the maintaining of the domiciliary office for the corporation or the appointment of a registered agent, this should be attended to at the first meeting of the Directors. (See Part III. p. 587.) The issuance of stock in exchange for property should be provided for by resolution in accordance with the terms of a similar resolution passed by the incorporators at their organization meeting. If the stock is to be paid for in cash, a resolution substantially in the following form should be passed by the Board, to wit:

RESOLVED, that an assessment be, and the same hereby is, made of  
dollars per share from the amount unpaid upon the shares of the capital stock of the  
Company, and that the same be paid to the Treasurer of the Company on or before  
the            day of            , 190 .

# ORGANIZATION TAXES.

## TABLE I.

### TABLE OF ORGANIZATION TAXES PAYABLE UPON INCORPORATION.

(CAPITALIZATION.)

State.	\$2,000.00	\$5,000 00	\$25,000.00	\$50,000.00	\$100,000.00	\$200,000.00	\$500,000.00	\$1,000,000.00	\$5,000,000.00	Approximate Sundry fees.
Alabama	\$25.00	25.00	25.00	25.00	50.00	75.00	150.00	275.00	1,275.00	8.00
Alaska	Merely filing fees.									
Arizona	Merely filing fees.									
Arkansas	30.00	30.00	30.00	35.00	45.00	65.00	125.00	285.00	1,025.00	7.50
California	15.00	15.00	15.00	25.00	50.00	50.00	75.00	100.00	500.00	13.00
Colorado	20.00	20.00	20.00	20.00	30.00	50.00	110.00	210.00	1,010.00	15.00
Connecticut	25.00	25.00	25.00	25.00	50.00	100.00	250.00	500.00	2,500.00	12.00
Delaware	20.00	20.00	20.00	20.00	20.00	30.00	75.00	150.00	750.00	11.00
Dist. of Col.	25.00	25.00	25.00	25.00	40.00	80.00	200.00	400.00	2,000.00	3.00
Florida	5.00	10.00	50.00	100.00	200.00	250.00	250.00	250.00	250.00	15.00
Georgia	No organization tax									
Hawaii	A stamp tax of \$25.00 on any capitalization is imposed									
Idaho	5.00	5.00	5.00	10.00	10.00	20.00	20.00	25.00	25.00	12.00
Illinois	80.00	50.00	70.00	95.00	145.00	245.00	545.00	1,045.00	5,045.00	7.00
Indiana	10.00	10.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,000.00	5.00
Ind. Territory	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	10.00
Iowa	25.00	25.00	40.00	65.00	115.00	215.00	515.00	1,015.00	5,015.00	35.00
Kansas	27.00	30.00	50.00	75.00	125.00	175.00	325.00	525.00	1,325.00	27.50
Kentucky	2.00	5.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,000.00	8.00
Louisiana	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	50.00
Maine	10.00	10.00	50.00	50.00	50.00	50.00	50.00	100.00	500.00	18.00
Maryland	2.50	6.25	31.25	62.50	125.00	250.00	625.00	1,250.00	6,250.00	10.00
Massachusetts	10.00	10.00	10.00	12.50	25.00	50.00	125.00	250.00	1,250.00	5.00
Michigan	5.00	5.00	12.50	25.00	50.00	100.00	250.00	500.00	2,500.00	7.00
Minnesota	50.00	50.00	50.00	50.00	75.00	125.00	275.00	525.00	2,525.00	21.00
Mississippi	20.00	20.00	40.00	60.00	100.00	200.00	250.00	250.00	250.00	20.00
Missouri	50.00	50.00	50.00	50.00	75.00	125.00	275.00	525.00	2,525.00	5.00
Montana	20.00	20.00	20.00	25.00	50.00	90.00	185.00	285.00	685.00	10.00
Nebraska	10.00	10.00	10.00	10.00	10.00	20.00	50.00	100.00	500.00	18.00
Nevada	10.00	10.00	10.00	10.00	10.00	20.00	50.00	100.00	500.00	15.00
N. Hampshire (Non-resident corporations)	10.00	10.00	10.00	25.00	25.00	50.00	50.00	100.00	200.00	6.50
New Jersey	25.00	25.00	25.00	25.00	25.00	40.00	100.00	200.00	1,000.00	8.00
New Mexico	25.00	25.00	25.00	25.00	25.00	25.00	50.00	100.00	500.00	18.00
New York	1.00	2.50	12.50	25.00	50.00	100.00	250.00	500.00	2,500.00	15.00
No. Carolina	25.00	25.00	25.00	25.00	25.00	40.00	100.00	200.00	1,000.00	5.00
North Dakota	50.00	50.00	50.00	50.00	75.00	125.00	275.00	525.00	2,525.00	12.00
Ohio	10.00	10.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,000.00	12.00
Oklahoma	Merely filing fees.									
Oregon	10.00	10.00	20.00	25.00	35.00	45.00	60.00	75.00	100.00	4.25
Pennsylvania	6.66	16.66	83.33	166.66	333.33	666.66	1,666.66	3,333.33	16,666.66	50.00
Rhode Island	100.00	100.00	100.00	100.00	100.00	200.00	500.00	1,000.00	5,000.00	2.50
South Carolina	5.00	5.00	25.00	50.00	100.00	150.00	300.00	550.00	1,550.00	10.00
South Dakota	10.00	10.00	10.00	15.00	15.00	20.00	20.00	25.00	40.00	3.00
Tennessee	12.00	15.00	35.00	60.00	110.00	210.00	510.00	1,010.00	5,010.00	23.00
Texas	25.00	25.00	35.00	45.00	70.00	120.00	270.00	520.00	2,520.00	2.80
Utah	.50	1.25	6.25	12.50	25.00	50.00	125.00	250.00	1,250.00	12.00
Vermont	10.00	10.00	50.00	50.00	100.00	100.00	200.00	300.00	500.00	4.00
Virginia	10.00	10.00	10.00	10.00	20.00	40.00	100.00	600.00	600.00	15.00
Washington	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
W. Virginia (Non-resident corporations)	15.00	15.00	20.00	30.00	50.00	75.00	150.00	275.00	725.00	38.00
Wisconsin	25.00	25.00	25.00	50.00	100.00	200.00	500.00	1,000.00	5,000.00	4.00
Wyoming	5.00	5.00	10.00	10.00	10.00	15.00	30.00	55.00	255.00	15.00



INCORPORATION AND ORGANIZATION OF CORPORATIONS.

TABLE II.  
TABLE OF ANNUAL FRANCHISE TAX UPON  
DOMESTIC CORPORATIONS.  
(CAPITALIZATION.)

State.	\$10,000.00	\$25,000.00	\$50,000.00	\$100,000.00	\$200,000.00	\$300,000.00	\$500,000.00	\$1,000,000.00	\$5,000,000.00
Alabama	\$10.00	15.00	25.00	50.00	75.00	125.00	200.00	300.00	500.00
Alaska	none	none	none	none	none	none	none	none	none
Arizona	none	none	none	none	none	none	none	none	none
Arkansas	none	none	none	none	none	none	none	none	none
California	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
Colorado	none	.50	1.00	2.00	4.00	6.00	10.00	20.00	100.00
Connecticut	none	none	none	none	none	none	none	none	none
Delaware	5.00	12.50	25.00	50.00	100.00	150.00	250.00	500.00	2,000.00
Dist. of Col.	none	none	none	none	none	none	none	none	none
Florida	none	none	none	none	none	none	none	none	none
Georgia	none	none	none	none	none	none	none	none	none
Hawaii	2% on net income of corporation								
Idaho	none	none	none	none	none	none	none	none	none
Illinois	none	none	none	none	none	none	none	none	none
Indiana	none	none	none	none	none	none	none	none	none
Iowa	none	none	none	none	none	none	none	none	none
Kansas	none	none	none	none	none	none	none	none	none
Kentucky	none	none	none	none	none	none	none	none	none
Louisiana	none	none	none	none	none	none	none	none	none
Maine	5.00	5.00	5.00	10.00	10.00	25.00	25.00	50.00	150.00
Maryland	none	none	none	none	none	none	none	none	none
Mass.	10.00	25.00	50.00	100.00	200.00	300.00	500.00	1,000.00	5,000.00
Michigan	none	none	none	none	none	none	none	none	none
Minnesota	none	none	none	none	none	none	none	none	none
Mississippi	none	none	none	none	none	none	none	none	none
Missouri	none	none	none	none	none	none	none	none	none
Montana	none	none	none	none	none	none	none	none	none
Nebraska	none	none	none	none	none	none	none	none	none
Nevada	none	none	none	none	none	none	none	none	none
N. Hampshire	none	none	none	none	none	none	none	none	none
New Jersey	10.00	25.00	50.00	100.00	200.00	300.00	500.00	1,000.00	4,000.00
New Mexico	none	none	none	none	none	none	none	none	none
New York	15.00	37.50	75.00	150.00	300.00	450.00	750.00	1,500.00	7,500.00
(On basis of 6 per cent dividend)									
N. Carolina	5.00	5.00	5.00	10.00	25.00	50.00	100.00	200.00	500.00
N. Dakota	none	none	none	none	none	none	none	none	none
Ohio	10.00	25.00	50.00	100.00	200.00	300.00	500.00	1,000.00	5,000.00
Oklahoma	none	none	none	none	none	none	none	none	none
Oregon	15.00	20.00	30.00	50.00	70.00	100.00	100.00	125.00	200.00
Pennsylvania	50.00	125.00	250.00	500.00	1,000.00	1,500.00	2,500.00	5,000.00	25,000.00
Rhode Island	none	none	none	none	none	none	none	none	none
S. Carolina	5.00	12.50	25.00	50.00	100.00	150.00	250.00	500.00	2,500.00
S. Dakota	none	none	none	none	none	none	none	none	none
Tennessee	none	none	none	none	none	none	none	none	none
Texas	10.00	12.50	25.00	50.00	60.00	70.00	90.00	140.00	240.00
Utah	none	none	none	none	none	none	none	none	none
Vermont	10.00	10.00	10.00	15.00	25.00	35.00	50.00	50.00	50.00
Virginia	10.00	10.00	20.00	40.00	60.00	60.00	100.00	200.00	600.00
Washington	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
W. Virginia	15.00	15.00	20.00	30.00	50.00	75.00	150.00	275.00	725.00
(Non-resident corporations)									
Wisconsin	none	none	none	none	none	none	none	none	none
Wyoming	none	none	none	none	none	none	none	none	none

TABLE III.

TABULATED QUESTIONS AND ANSWERS RELATIVE  
TO THE BUSINESS CORPORATION ACTS OF THE  
SEVERAL STATES AND TERRITORIES.

State.	Is a certificate of due organization is- sued by State offi- cials?	Is collateral in- quiry into legality of corporate exist- ence expressly for- bidden by statute?	Is form of charter expressly required to be approved by State officials or court?	Is anti-Trust Act in force within the State?	Is right to inspect corporate books given by statute?
Alabama	No	No	Yes	Yes	Yes
Alaska	No	No	No	No	Yes
Arizona	No	Yes	No	No	Yes
Arkansas	Yes	No	Yes	Yes	Yes
California	No	Yes	Yes	Yes	Yes
Colorado	No	No	Yes	No	Yes
Connecticut	No	Yes	Yes	No	Yes
Delaware	No	Yes	No	No	Yes
District of Columbia	No	No	No	No	Yes
Florida	No	Yes	Yes	Yes	Yes
Georgia	No	Yes	Yes	Yes	Yes
Hawaii	No	No	No	No	Yes
Idaho	No	Yes	Yes	Yes	Yes
Illinois	Yes	No	Yes	Yes	Yes
Indiana	Yes	No	Yes	Yes	Yes
Indian Territory	No	No	Yes	Yes	Yes
Iowa	No	Yes	No	Yes	Yes
Kansas	No	No	Yes	Yes	Yes
Kentucky	No	Yes	No	Yes	Yes
Louisiana	No	Yes	No	Yes	Yes
Maine	No	No	Yes	Yes	Yes
Maryland	No	Yes	Yes	No	Yes
Massachusetts	No	Yes	Yes	No	Yes
Michigan	No	Yes	Yes	Yes	Yes
Minnesota	No	No	No	Yes	Yes
Mississippi	No	Yes	Yes	Yes	No
Missouri	Yes	No	Yes	Yes	Yes
Montana	No	Yes	Yes	Yes	Yes
Nebraska	No	Yes	No	Yes	Yes
Nevada	No	Yes	Yes	No	Yes
New Hampshire	No	No	No	No	Yes
New Jersey	No	No	No	No	Yes
New Mexico	No	Yes	No	Yes	Yes
New York	No	No	No	Yes	Yes
North Carolina	No	No	No	Yes	Yes
North Dakota	No	Yes	Yes	Yes	Yes
Ohio	No	No	No	Yes	Yes
Oklahoma	No	Yes	No	No	Yes
Oregon	No	No	No	No	Yes
Pennsylvania	No	No	Yes	No	Yes
Rhode Island	No	No	Yes	No	No
South Carolina	No	Yes	Yes	Yes	Yes
South Dakota	No	Yes	Yes	Yes	Yes
Tennessee	No	Yes	Yes	Yes	No
Texas	No	Yes	No	Yes	Yes
Utah	Yes	No	Yes	Yes	Yes
Vermont	No	No	Yes	No	Yes
Virginia	No	Yes	Yes	No	No
Washington	No	Yes	No	Yes	Yes
West Virginia	No	Yes	Yes	No	No
Wisconsin	No	Yes	No	Yes	Yes
Wyoming	No	No	No	Yes	No

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## TABLE IV.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

State.	Does statute expressly authorize appointment of Executive Committee from Board of Directors?	Is a charter issued by State officials?	Are there any residential requirements as to directors?	Are articles required to be filed in local county offices?	Number of incorporators required.
Alabama	No	No	No	Yes	Three or more
Alaska	No	No	Yes	Yes	Three or more
Arizona	No	Yes	No	Yes	Two or more
Arkansas	No	Yes	No	Yes	Three or more
California	No	Yes	Yes	Yes	Three or more
Colorado	No	Yes	No	Yes	Three or more
Connecticut	Yes	No	No	Yes	Three or more
Delaware	Yes	No	Yes	Yes	Three or more
Dist. of Columbia	No	No	Yes	Yes	Three or more
Florida	No	Yes	No	Yes	Three or more
Georgia	No	Yes	No	Yes	Two or more
Hawaii	No	No	No	No	Five or more
Idaho	No	Yes	Yes	Yes	Three or more
Illinois	No	Yes	No	Yes	Three to seven
Indiana	No	Yes	Yes	Yes	Three or more
Ind. Territory	No	Yes	No	Yes	Three or more
Iowa	No	No	No	Yes	One or more
Kansas	No	Yes	Yes	No	Five or more
Kentucky	No	No	No	Yes	Three or more
Louisiana	No	No	No	Yes	Three or more
Maine	No	No	No	Yes	Three or more
Maryland	No	No	Yes	Yes	Five or more
Massachusetts	Yes	Yes	No	No	Three or more
Michigan	No	Yes	No	Yes	Three or more
Minnesota	No	Yes	No	Yes	Three or more
Mississippi	No	Yes	No	Yes	Two or more
Missouri	No	Yes	Yes	Yes	Three or more
Montana	No	Yes	No	Yes	Three or more
Nebraska	No	No	No	Yes	One or more
Nevada	Yes	Yes	No	Yes	Three or more
New Hampshire	No	No	Yes	Yes	Five or more
New Jersey	Yes	No	Yes	Yes	Three or more
New Mexico	Yes	No	Yes	Yes	Three or more
New York	No	No	Yes	Yes	Three or more
North Carolina	No	No	Yes	Yes	Three or more
North Dakota	No	Yes	Yes	No	Three or more
Ohio	No	Yes	Yes	No	Five or more
Oklahoma	No	Yes	Yes	No	Three or more
Oregon	No	Yes	Yes	Yes	Three or more
Pennsylvania	No	Yes	Yes	Yes	Three or more
Rhode Island	No	Yes	No	No	Three or more
South Carolina	No	Yes	No	Yes	Two or more
South Dakota	No	Yes	Yes	No	Three or more
Tennessee	No	Yes	No	Yes	Five or more
Texas	No	No	No	No	Three or more
Utah	No	Yes	Yes	Yes	Five or more
Vermont	No	No	Yes	Yes	Five or more
Virginia	Yes	Yes	No	Yes	Three or more
Washington	No	No	Yes	Yes	Two or more
West Virginia	Yes	Yes	No	Yes	Five or more
Wisconsin	No	No	No	Yes	Three or more
Wyoming	No	No	No	Yes	Three or more

QUESTIONS AND ANSWERS RELATIVE TO CORPORATION ACTS.

TABLE V.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>State.</i>	Are there any residential requirements as to incorporators?	Is similarity of corporate names expressly forbidden?	Is incorporation for more than one purpose expressly authorized by statute?	Minimum capitalization fixed by law.
Alabama . . . . .	No	Yes	Yes	\$2,000
Alaska . . . . .	Yes	No	Yes	None
Arizona . . . . .	No	No	No	None
Arkansas . . . . .	No	No	No	None
California . . . . .	Yes	Yes	Yes	None
Colorado . . . . .	No	Yes	Yes	None
Connecticut . . . . .	No	Yes	Yes	\$2,000
Delaware . . . . .	No	Yes	Yes	\$2,000
Dist. of Columbia . . . . .	No	Yes	No	None
Florida . . . . .	No	Yes	Yes	None
Georgia . . . . .	No	Yes	No	None
Hawaii . . . . .	Yes	No	No	None
Idaho . . . . .	Yes	No	No	None
Illinois . . . . .	No	Yes	No	None
Indiana . . . . .	No	Yes	Yes	None
Indian Territory . . . . .	No	No	No	None
Iowa . . . . .	No	No	No	None
Kansas . . . . .	Yes	Yes	No	None
Kentucky . . . . .	No	Yes	Yes	None
Louisiana . . . . .	No	No	Yes	\$5,000
Maine . . . . .	No	No	Yes	\$1,000
Maryland . . . . .	Yes	No	Yes	None
Massachusetts . . . . .	No	Yes	Yes	\$1,000
Michigan . . . . .	No	Yes	No	Min. \$1,000, Max. \$25,000,000
Minnesota . . . . .	No	Yes	No	\$10,000
Mississippi . . . . .	No	No	Yes	None
Missouri . . . . .	No	Yes	No	Min. \$2,000, Max. \$10,000,000
Montana . . . . .	No	No	No	None
Nebraska . . . . .	No	No	No	None
Nevada . . . . .	No	Yes	Yes	\$2,000
New Hampshire . . . . .	No	Yes	No	Min. \$1,000, Max. \$1,000,000
New Jersey . . . . .	No	Yes	Yes	\$2,000
New Mexico . . . . .	No	Yes	Yes	\$3,000
New York . . . . .	Yes	Yes	Yes	\$500
North Carolina . . . . .	No	Yes	Yes	None
North Dakota . . . . .	Yes	No	No	None
Ohio . . . . .	Yes	Yes	No	None
Oklahoma . . . . .	Yes	No	No	None
Oregon . . . . .	No	Yes	No	None
Pennsylvania . . . . .	Yes	No	No	None
Rhode Island . . . . .	No	Yes	No	None
South Carolina . . . . .	No	No	Yes	None
South Dakota . . . . .	Yes	No	No	None
Tennessee . . . . .	No	Yes	No	None
Texas . . . . .	Yes	No	No	None
Utah . . . . .	Yes	Yes	No	None
Vermont . . . . .	No	Yes	Yes	\$500
Virginia . . . . .	No	Yes	Yes	None
Washington . . . . .	No	Yes	Yes	None
W. Virginia . . . . .	No	Yes	Yes	None
Wisconsin . . . . .	Yes	No	Yes	None
Wyoming . . . . .	No	No	No	None

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## TABLE VI.

### TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>State.</i>	<i>Minimum and maximum par value of shares.</i>	<i>Minimum capitalization paid in to commence busi- ness.</i>	<i>Percentage of capital stock required to be sub- scribed before commencing business.</i>
Alabama . . .	Any amount . . .	Twenty per cent . . .	Twenty-five per cent
Alaska . . .	Any amount . . .	No limit . . .	None
Arizona . . .	Any amount . . .	No limit . . .	None
Arkansas . . .	\$25 . . .	No limit . . .	None
California . . .	Any amount . . .	No limit . . .	None
Colorado . . .	\$1 to \$100 . . .	No limit . . .	None
Connecticut . . .	Min. \$25 . . .	\$1,000 . . .	\$1,000
Delaware . . .	Any amount . . .	\$1,000 . . .	\$1,000
Dist. of Columbia . . .	Any amount . . .	Ten per cent . . .	Ten per cent
Florida . . .	\$10 up . . .	Ten per cent . . .	Ten per cent
Georgia . . .	Any amount . . .	Ten per cent . . .	Ten per cent
Hawaii . . .	Any amount . . .	Ten per cent . . .	Three-fourths
Idaho . . .	Any amount . . .	No limit . . .	None
Illinois . . .	\$10 to \$100 . . .	No limit . . .	All
Indiana . . .	Max. \$100 . . .	No limit . . .	None
Ind. Territory . . .	\$25 . . .	No limit . . .	None
Iowa . . .	Any amount . . .	No limit . . .	None
Kansas . . .	Any amount . . .	Twenty per cent . . .	Twenty per cent
Kentucky . . .	Any amount . . .	No limit . . .	Fifty per cent
Louisiana . . .	Any amount . . .	No limit . . .	None
Maine . . .	Any amount . . .	No limit . . .	None
Maryland . . .	Any amount . . .	No limit . . .	None
Massachusetts . . .	Min. \$5 . . .	No limit . . .	None
Michigan . . .	\$10 to \$100 . . .	Ten per cent . . .	Fifty per cent
Minnesota . . .	\$1 to \$100 . . .	No limit . . .	None
Mississippi . . .	Any amount . . .	No limit . . .	None
Missouri . . .	Any amount . . .	Fifty per cent . . .	All
Montana . . .	Any amount . . .	No limit . . .	None
Nebraska . . .	Any amount . . .	No limit . . .	None
Nevada . . .	Any amount . . .	No limit . . .	\$1,000
New Hampshire . . .	\$25 to \$500 . . .	No limit . . .	None
New Jersey . . .	Any amount . . .	\$1,000 . . .	\$1,000
New Mexico . . .	Any amount . . .	\$2,000 . . .	\$2,000
New York . . .	\$5 to \$100 . . .	\$500 . . .	\$500
North Carolina . . .	Any amount . . .	No limit . . .	None
North Dakota . . .	Any amount . . .	No limit . . .	None
Ohio . . .	Any amount . . .	No limit . . .	Ten per cent
Oklahoma . . .	Any amount . . .	No limit . . .	None
Oregon . . .	Any amount . . .	No limit . . .	One-half
Pennsylvania . . .	Not over \$100 . . .	Ten per cent . . .	Ten per cent
Rhode Island . . .	Any amount . . .	No limit . . .	None
South Carolina . . .	Any amount . . .	Twenty per cent . . .	Fifty per cent
South Dakota . . .	Any amount . . .	No limit . . .	None
Tennessee . . .	\$100 or less . . .	Unlimited, except brewery cos. . .	None
Texas . . .	Any amount . . .	Ten per cent . . .	Fifty per cent
Utah . . .	Any amount . . .	Ten per cent . . .	Ten per cent
Vermont . . .	Cannot exceed \$100 . . .	One fourth . . .	One fourth
Virginia . . .	Any amount . . .	No limit . . .	Minimum capitalization
Washington . . .	Any amount . . .	No limit . . .	All
West Virginia . . .	Any amount . . .	10% of subscriptions . . .	Five shares
Wisconsin . . .	Any amount . . .	Twenty per cent . . .	Fifty per cent
Wyoming . . .	Any amount . . .	No limit . . .	None

QUESTIONS AND ANSWERS RELATIVE TO CORPORATION ACTS.

TABLE VII.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>State.</i>	<i>Is graduated organiza- tion tax imposed upon domestic corporations?</i>	<i>Is annual license tax im- posed upon domestic cor- porations?</i>	<i>Must charter be pub- lished?</i>	<i>Are annual reports to State officials required?</i>
Alabama . . . . .	Yes	Yes	No	No
Alaska . . . . .	No	No	No	Yes
Arizona . . . . .	No	No	Yes	No
Arkansas . . . . .	Yes	No	No	Yes
California . . . . .	Yes	Yes	No	No
Colorado . . . . .	Yes	Yes	No	Yes
Connecticut . . . . .	Yes	No	No	Yes
Delaware . . . . .	Yes	Yes	No	Yes
District of Columbia . . . . .	Yes	No	No	Yes
Florida . . . . .	Yes	No	Yes	Yes
Georgia . . . . .	No	No	Yes	No
Hawaii . . . . .	No	Yes	No	Yes
Idaho . . . . .	Yes	No	No	No
Illinois . . . . .	Yes	No	No	Yes
Indiana . . . . .	Yes	No	No	Yes
Indian Territory . . . . .	No	No	No	Yes
Iowa . . . . .	Yes	No	Yes	Yes
Kansas . . . . .	Yes	No	No	Yes
Kentucky . . . . .	Yes	No	No	No
Louisiana . . . . .	No	No	Yes	Yes
Maine . . . . .	Yes	Yes	No	Yes
Maryland . . . . .	Yes	Yes (conditionally)	No	No
Massachusetts . . . . .	Yes	Yes	No	Yes
Michigan . . . . .	Yes	No	No	Yes
Minnesota . . . . .	Yes	No	Yes	No
Mississippi . . . . .	Yes	No	Yes	No
Missouri . . . . .	Yes	No	No	Yes
Montana . . . . .	Yes	No	No	Yes
Nebraska . . . . .	Yes	No	Yes	Yes
Nevada . . . . .	Yes	No	No	No
New Hampshire . . . . .	Yes	No	No	Yes
New Jersey . . . . .	Yes	Yes	No	Yes
New Mexico . . . . .	Yes	No	Yes	Yes
New York . . . . .	Yes	Yes	No	Yes
North Carolina . . . . .	Yes	Yes	No	Yes
North Dakota . . . . .	Yes	No	No	No
Ohio . . . . .	Yes	Yes	No	Yes
Oklahoma . . . . .	No	No	No	Yes
Oregon . . . . .	Yes	Yes	No	Yes
Pennsylvania . . . . .	Yes	Yes	Yes	Yes
Rhode Island . . . . .	Yes	No	No	No
South Carolina . . . . .	Yes	Yes	No	Yes
South Dakota . . . . .	Yes	No	No	Yes
Tennessee . . . . .	Yes	No	No	Yes
Texas . . . . .	Yes	Yes	No	No
Utah . . . . .	Yes	No	No	No
Vermont . . . . .	Yes	Yes	No	No
Virginia . . . . .	Yes	Yes	No	Yes
Washington . . . . .	No	Yes	No	Yes
West Virginia . . . . .	Yes	Yes	No	No
Wisconsin . . . . .	Yes	No	No	Yes
Wyoming . . . . .	Yes	No	Yes	No

# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## TABLE VIII.

### TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>States.</i>	Can period of corporate existence be extended?	Is power of amend- ment of charter broad or narrow?	Can dissolution be ef- fected without recourse to the courts?	Does statute expressly authorize issuance of pre- ferred stock?	Does statute confer power to purchase stock in other corporations?
Alabama . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .
Alaska . . . . .	No . . . .	Broad . . . .	Yes . . . .	No . . . .	No . . . .
Arizona . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	No . . . .	No . . . .
Arkansas . . . . .	No . . . .	Broad . . . .	Yes . . . .	Yes . . . .	No . . . .
California . . . . .	Yes . . . .	Broad . . . .	No . . . .	No . . . .	No . . . .
Colorado . . . . .	No . . . .	Narrow . . . .	Yes . . . .	No . . . .	No . . . .
Connecticut . . . . .	No . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .
Delaware . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .
District of Columbia . . . . .	No . . . .	Narrow . . . .	No . . . .	No . . . .	Forbidden
Florida . . . . .	No . . . .	Broad . . . .	No . . . .	No . . . .	No . . . .
Georgia . . . . .	Yes . . . .	Narrow . . . .	No . . . .	No . . . .	Yes . . . .
Hawaii . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	Yes . . . .	No . . . .
Idaho . . . . .	Yes . . . .	Narrow . . . .	No . . . .	No . . . .	No . . . .
Illinois . . . . .	No . . . .	Broad . . . .	Yes . . . .	No . . . .	Yes limited
Indiana . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes limited
Indian Territory . . . . .	No . . . .	Broad . . . .	Yes . . . .	No . . . .	No . . . .
Iowa . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	No . . . .	No . . . .
Kansas . . . . .	Yes . . . .	Broad . . . .	No . . . .	Yes . . . .	No . . . .
Kentucky . . . . .	No . . . .	Broad . . . .	Yes . . . .	Yes . . . .	No . . . .
Louisiana . . . . .	No . . . .	Broad . . . .	Yes . . . .	No . . . .	No . . . .
Maine . . . . .	No . . . .	Limited . . . .	No . . . .	Yes . . . .	Yes . . . .
Maryland . . . . .	No . . . .	Broad . . . .	No . . . .	Yes . . . .	No . . . .
Massachusetts . . . . .	No . . . .	Broad . . . .	No . . . .	Yes . . . .	No . . . .
Michigan . . . . .	Yes . . . .	Broad . . . .	No . . . .	Yes . . . .	No . . . .
Minnesota . . . . .	Yes . . . .	Broad . . . .	No . . . .	Yes . . . .	No . . . .
Mississippi . . . . .	Yes . . . .	Broad . . . .	No . . . .	No . . . .	No . . . .
Missouri . . . . .	Yes . . . .	Limited . . . .	No . . . .	Yes . . . .	No . . . .
Montana . . . . .	Yes . . . .	Broad . . . .	No . . . .	Yes . . . .	No . . . .
Nebraska . . . . .	No . . . .	Limited . . . .	Yes . . . .	No . . . .	No . . . .
Nevada . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .
New Hampshire . . . . .	No . . . .	Broad . . . .	No . . . .	Yes . . . .	No . . . .
New Jersey . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .
New Mexico . . . . .	Yes . . . .	Broad . . . .	No . . . .	Yes . . . .	Yes . . . .
New York . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .
North Carolina . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	Yes . . . .	No . . . .
North Dakota . . . . .	Yes . . . .	Broad . . . .	No . . . .	No . . . .	No . . . .
Ohio . . . . .	No . . . .	Broad . . . .	No . . . .	Yes . . . .	Yes limited
Oklahoma . . . . .	Yes . . . .	Broad . . . .	No . . . .	No . . . .	No . . . .
Oregon . . . . .	No . . . .	Broad . . . .	Yes . . . .	No . . . .	No . . . .
Pennsylvania . . . . .	Yes . . . .	Broad . . . .	No . . . .	Yes . . . .	Yes . . . .
Rhode Island . . . . .	No . . . .	Broad . . . .	Yes . . . .	Yes . . . .	No . . . .
South Carolina . . . . .	Yes . . . .	Narrow . . . .	Yes . . . .	Yes . . . .	No . . . .
South Dakota . . . . .	Yes . . . .	Broad . . . .	No . . . .	No . . . .	No . . . .
Tennessee . . . . .	No . . . .	Broad . . . .	No . . . .	Yes . . . .	Yes . . . .
Texas . . . . .	No . . . .	Limited . . . .	No . . . .	Yes . . . .	No . . . .
Utah . . . . .	No . . . .	Broad . . . .	No . . . .	Yes . . . .	No . . . .
Vermont . . . . .	No . . . .	Broad . . . .	No . . . .	No . . . .	No . . . .
Virginia . . . . .	No . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .
Washington . . . . .	No . . . .	Broad . . . .	Yes . . . .	No . . . .	Yes . . . .
West Virginia . . . . .	Yes . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .
Wisconsin . . . . .	No . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .
Wyoming . . . . .	No . . . .	Broad . . . .	Yes . . . .	Yes . . . .	Yes . . . .

TABLE IX.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>States.</i>	Does statute confer power to consolidate with other corporations?	Does statute confer power to sell all the corporate assets?	Does corporation have lien on stock for debts due from stockholders?	Is cumulative voting for directors permitted?	Does statute confer power upon stockholders to remove directors?
Alabama . . . . .	Yes	No	Yes	No	No
Alaska . . . . .	No	No	No	No	Yes
Arizona . . . . .	No	No	No	No	No
Arkansas . . . . .	No	No	Yes	No	No
California . . . . .	Yes	Yes	No	Yes	Yes
Colorado . . . . .	Yes	No	No	Yes	No
Connecticut . . . . .	Yes	No	Yes	Yes	No
Delaware . . . . .	Yes	No	No	Yes	No
District of Columbia . . . . .	No	No	No	No	No
Florida . . . . .	No	No	No	No	No
Georgia . . . . .	No	No	Yes	No	No
Hawaii . . . . .	No	No	No	No	No
Idaho . . . . .	No	No	No	No	Yes
Illinois . . . . .	Yes	No	No	Yes	No
Indiana . . . . .	Yes	No	Yes	No	No
Indian Territory . . . . .	No	No	Yes	No	No
Iowa . . . . .	No	No	No	No	No
Kansas . . . . .	No	No	No	Yes	No
Kentucky . . . . .	Yes	No	No	Yes	No
Louisiana . . . . .	Yes	No	No	No	No
Maine . . . . .	Yes	No	No	No	No
Maryland . . . . .	Yes	No	No	Yes	Yes
Massachusetts . . . . .	No	No	No	No	No
Michigan . . . . .	No	No	Yes	Yes	No
Minnesota . . . . .	No	No	Yes	No	No
Mississippi . . . . .	No	No	No	Yes	No
Missouri . . . . .	Yes	No	No	Yes	No
Montana . . . . .	Yes	Yes	No	Yes	Yes
Nebraska . . . . .	No	No	No	Yes	No
Nevada . . . . .	Yes	No	No	Yes	Yes
New Hampshire . . . . .	No	No	No	No	No
New Jersey . . . . .	Yes	No	Yes	Yes	No
New Mexico . . . . .	Yes	Yes	No	Yes	No
New York . . . . .	Yes	Yes	Yes	Yes	No
North Carolina . . . . .	No	No	No	Yes	No
North Dakota . . . . .	No	No	No	Yes	Yes
Ohio . . . . .	Yes	No	No	Yes	No
Oklahoma . . . . .	No	No	No	No	Yes
Oregon . . . . .	Yes limited	Yes	No	No	No
Pennsylvania . . . . .	Yes	Yes	Yes	Yes	No
Rhode Island . . . . .	No	No	Yes	No	No
South Carolina . . . . .	No	No	Yes	Yes	No
South Dakota . . . . .	Yes	No	No	Yes	Yes
Tennessee . . . . .	Yes	Yes	No	No	No
Texas . . . . .	No	No	No	No	No
Utah . . . . .	Yes	Yes	Yes	No	Yes
Vermont . . . . .	No	No	Yes	No	No
Virginia . . . . .	Yes	Yes	No	Yes	Yes
Washington . . . . .	No	No	No	No	Yes
West Virginia . . . . .	Yes	Yes	No	Yes	Yes
Wisconsin . . . . .	No	Yes	No	No	No
Wyoming . . . . .	No	No	No	No	No



# INCORPORATION AND ORGANIZATION OF CORPORATIONS.

## TABLE X.

### TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>States.</i>	Must property taken in exchange for stock be described in charter or reported to State officials?	Does statute make judgment of directors conclusive as to value of property taken in exchange for stock?	Does statute expressly authorize insertion in articles of provision for regulation of internal affairs of the corporation?	Does statute impose any liability upon stockholders beyond that for unpaid stock subscriptions?	Is capital stock payable by express provision of statute in services and property?
Alabama . . . . .	No	No	Yes	No	Yes
Alaska . . . . .	No	No	No	No	Yes
Arizona . . . . .	No	No	No	No	No
Arkansas . . . . .	No	No	No	No	Yes
California . . . . .	No	No	No	Yes	Yes
Colorado . . . . .	No	No	No	No	Yes
Connecticut . . . . .	No	Yes	Yes	No	Yes
Delaware . . . . .	No	Yes	Yes	No	Yes
District of Columbia . . . . .	No	No	No	No	Yes
Florida . . . . .	Yes	No	No	No	Yes
Georgia . . . . .	No	No	No	No	No
Hawaii . . . . .	No	No	No	No	Yes
Idaho . . . . .	No	No	No	No	Yes
Illinois . . . . .	No	No	No	No	No
Indiana . . . . .	No	No	No	Yes	No
Indian Territory . . . . .	No	No	No	No	Yes
Iowa . . . . .	No	No	No	No	Yes
Kansas . . . . .	No	No	No	No	No
Kentucky . . . . .	No	No	No	No	Yes
Louisiana . . . . .	No	No	No	No	Yes
Maine . . . . .	No	Yes	No	No	Yes
Maryland . . . . .	No	No	Yes	No	Yes
Massachusetts . . . . .	Yes	No	Yes	Yes	Yes
Michigan . . . . .	Yes	Yes	No	Yes	Yes
Minnesota . . . . .	No	No	No	Yes	No
Mississippi . . . . .	No	No	No	No	No
Missouri . . . . .	No	No	No	No	Yes
Montana . . . . .	No	Yes	No	No	Yes
Nebraska . . . . .	No	No	No	No	No
Nevada . . . . .	No	Yes	Yes	No	Yes
New Hampshire . . . . .	No	No	No	No	Yes
New Jersey . . . . .	No	Yes	Yes	No	Yes
New Mexico . . . . .	No	Yes	Yes	No	Yes
New York . . . . .	No	Yes	Yes	Yes	Yes
North Carolina . . . . .	No	Yes	Yes	No	Yes
North Dakota . . . . .	No	No	No	Yes	Yes
Ohio . . . . .	No	No	No	No	Yes
Oklahoma . . . . .	No	No	No	Yes	Yes
Oregon . . . . .	No	No	No	No	No
Pennsylvania . . . . .	No	No	No	Yes	Yes
Rhode Island . . . . .	No	No	No	No	Yes
South Carolina . . . . .	No	No	Yes	No	Yes
South Dakota . . . . .	No	No	No	Yes	Yes
Tennessee . . . . .	No	No	Yes	Yes	Yes
Texas . . . . .	No	No	No	No	Yes
Utah . . . . .	Yes	No	Yes	No	Yes
Vermont . . . . .	No	No	No	No	No
Virginia . . . . .	Yes	Yes	Yes	No	Yes
Washington . . . . .	No	No	No	No	Yes
West Virginia . . . . .	No	Yes	Yes	No	Yes
Wisconsin . . . . .	No	No	Yes	Yes	Yes
Wyoming . . . . .	No	No	No	No	Yes

QUESTIONS AND ANSWERS RELATIVE TO CORPORATION ACTS.

TABLE XI.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>States.</i>	Time limit within which capital stock must be paid up.	Time within which corporation must organize and commence business.	Does statute expressly authorize stockholders' meetings to be held outside of domiciliary State?	Does statute expressly authorize organization meetings to be held outside of domiciliary State?
Alabama . . . . .	None . . . .	Five years . . . .	Yes . . . .	No . . . .
Alaska . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Arizona . . . . .	None . . . .	Five years . . . .	No . . . .	No . . . .
Arkansas . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
California . . . . .	None . . . .	One year . . . .	No . . . .	No . . . .
Colorado . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Connecticut . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
Delaware . . . . .	None . . . .	Two years . . . .	Yes . . . .	Yes . . . .
District of Columbia . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Florida . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Georgia . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
Hawaii . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Idaho . . . . .	None . . . .	One year . . . .	No . . . .	No . . . .
Illinois . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
Indiana . . . . .	Mfg. cos. 18 mos.	No limit . . . .	No . . . .	No . . . .
Indian Territory . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Iowa . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
Kansas . . . . .	None . . . .	One year . . . .	No . . . .	No . . . .
Kentucky . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
Louisiana . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Maine . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
Maryland . . . . .	Four years . . . .	No limit . . . .	No . . . .	No . . . .
Massachusetts . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Michigan . . . . .	None . . . .	No limit . . . .	Yes . . . .	No . . . .
Minnesota . . . . .	None . . . .	No limit . . . .	Yes . . . .	No . . . .
Mississippi . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Missouri . . . . .	50% immediately	No limit . . . .	No . . . .	No . . . .
Montana . . . . .	None . . . .	One year . . . .	No . . . .	No . . . .
Nebraska . . . . .	None . . . .	One year . . . .	No . . . .	No . . . .
Nevada . . . . .	None . . . .	Two years . . . .	Yes . . . .	Yes . . . .
New Hampshire . . . . .	None . . . .	Three years . . . .	No . . . .	No . . . .
New Jersey . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
New Mexico . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
New York . . . . .	$\frac{1}{2}$ within one year	Two years . . . .	No . . . .	No . . . .
North Carolina . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
North Dakota . . . . .	None . . . .	One year . . . .	Yes . . . .	Yes . . . .
Ohio . . . . .	None . . . .	Five years . . . .	No . . . .	No . . . .
Oklahoma . . . . .	None . . . .	One year . . . .	Yes . . . .	Yes . . . .
Oregon . . . . .	None . . . .	One year . . . .	No . . . .	No . . . .
Pennsylvania . . . . .	$\frac{1}{2}$ within two years	Two years . . . .	Yes (in part)	Yes (certain cases)
Rhode Island . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
South Carolina . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
South Dakota . . . . .	None . . . .	One year . . . .	Yes . . . .	Yes . . . .
Tennessee . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Texas . . . . .	None . . . .	Three years . . . .	No . . . .	No . . . .
Utah . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
Vermont . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
Virginia . . . . .	None . . . .	Two years . . . .	No . . . .	No . . . .
Washington . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .
West Virginia . . . . .	None . . . .	One year (six months)	Yes . . . .	Yes . . . .
Wisconsin . . . . .	None . . . .	One year . . . .	No . . . .	No . . . .
Wyoming . . . . .	None . . . .	No limit . . . .	No . . . .	No . . . .

TABLE XII.

TABULATED QUESTIONS AND ANSWERS (*Continued.*)

<i>States.</i>	Does statute expressly authorize directors' meetings to be held outside of domiciliary State?	Does statute expressly authorize transaction of business outside of domiciliary State?	Does statute authorize delegation of power to directors to adopt by-laws?	Is amount of corporate indebtedness limited by statute?	Are number of corporate purposes limited by law?
Alabama	Yes	Yes	No	No	No
Alaska	No	No	No	Yes	No
Arizona	No	No	No	Yes	No
Arkansas	No	No	No	No	No
California	No	No	Yes	Yes	No
Colorado	Yes	No	Yes	No	No
Connecticut	Yes	Yes	Yes	No	No
Delaware	Yes	Yes	Yes	No	No
District of Columbia	No	No	No	Yes	No
Florida	No	No	Yes	No	No
Georgia	No	No	No	No	No
Hawaii	No	No	No	Yes	No
Idaho	Yes	No	No	Yes	No
Illinois	Yes	No	Yes	Yes	No
Indiana	No	No	No	No	No
Indian Territory	No	No	No	No	No
Iowa	Yes	Yes	No	Yes	No
Kansas	Yes	No	Yes	Yes	Yes
Kentucky	Yes	No	Yes	No	No
Louisiana	No	No	No	No	No
Maine	Yes	Yes	No	No	No
Maryland	No	Yes	No	Yes	No
Massachusetts	Yes	Yes	No	No	No
Michigan	Yes	Yes	No	No	No
Minnesota	Yes	Yes	No	No	No
Mississippi	No	No	No	Yes	No
Missouri	No	No	No	No	Yes
Montana	Yes	No	No	Yes	No
Nebraska	No	No	No	Yes	No
Nevada	Yes	Yes	Yes	No	No
New Hampshire	No	No	No	Yes	No
New Jersey	Yes	Yes	Yes	No	No
New Mexico	Yes	Yes	Yes	No	No
New York	No	Yes	Yes	No	No
North Carolina	Yes	Yes	Yes	No	No
North Dakota	Yes	Yes	No	Yes	No
Ohio	Yes	Yes	Yes	Yes	Yes
Oklahoma	Yes	Yes	No	Yes	No
Oregon	Yes	No	No	No	No
Pennsylvania	Yes	No	Yes	No	Yes
Rhode Island	Yes	No	No	Yes	No
South Carolina	Yes	No	No	No	No
South Dakota	Yes	Yes	No	Yes	No
Tennessee	Yes	No	No	Yes	Yes
Texas	No	No	Yes	Yes	Yes
Utah	No	No	Yes	No	No
Vermont	No	No	No	Yes	No
Virginia	Yes	Yes	Yes	No	No
Washington	No	No	No	No	No
West Virginia	Yes	Yes	No	No	No
Wisconsin	Yes	No	No	No	No
Wyoming	Yes	Yes	Yes	Yes	Yes

TABLE XIII.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>States.</i>	<i>Duration of corporate existence.</i>	<i>Are foreign corporations required to obtain permit to do business within State?</i>	<i>Must foreign corporations pay an annual license tax?</i>	<i>Must foreign corporations pay license tax in order to transact business?</i>	<i>Must foreign corporations file annual reports with State officials?</i>
Alabama . . . . .	Unlimited	Yes	Yes	Yes	No
Alaska . . . . .	Fifty years	Yes	No	No	Yes
Arizona . . . . .	Twenty-five years	Yes	No	No	No
Arkansas . . . . .	Unlimited	Yes	No	Yes	No
California . . . . .	Fifty years	Yes	Yes	Yes	No
Colorado . . . . .	Twenty years	Yes	Yes	Yes	Yes
Connecticut . . . . .	Unlimited	Yes	No	No	Yes
Delaware . . . . .	Unlimited	Yes	No	Yes	No
District of Columbia . . . . .	Unlimited	No	No	No	Yes
Florida . . . . .	Unlimited	No	No	No	No
Georgia . . . . .	Twenty years	No	No	No	No
Hawaii . . . . .	Fifty years	Yes	Yes	Yes	Yes
Idaho . . . . .	Fifty years	Yes	No	Yes	No
Illinois . . . . .	Ninety-nine years	Yes	No	Yes	No
Indiana . . . . .	Fifty years, others perpetual	Yes	No	Yes	No
Indian Territory . . . . .	Unlimited	Yes	No	Yes	No
Iowa . . . . .	Twenty years	Yes	No	Yes	No
Kansas . . . . .	Twenty years	Yes	No	Yes	Yes
Kentucky . . . . .	Unlimited	Yes	No	No	No
Louisiana . . . . .	Ninety-nine years	Yes	No	No	Yes
Maine . . . . .	Unlimited	No	No	No	No
Maryland . . . . .	Forty years	Yes	No	Yes	No
Massachusetts . . . . .	Unlimited	Yes	Yes	Yes	Yes
Michigan . . . . .	Thirty years	Yes	No	Yes	Yes
Minnesota . . . . .	Thirty years	Yes	No	Yes	No
Mississippi . . . . .	Fifty years	Yes	No	Yes	No
Missouri . . . . .	Fifty years	Yes	No	Yes	Yes
Montana . . . . .	Twenty years	Yes	No	Yes	Yes
Nebraska . . . . .	Unlimited	Yes	No	Yes	Yes
Nevada . . . . .	Unlimited	Yes	No	Retaliatory.	Yes
New Hampshire . . . . .	Unlimited	No	No	No	Yes
New Jersey . . . . .	Unlimited	Yes	Retaliatory	Retaliatory.	Yes
New Mexico . . . . .	Fifty years	Yes	No	Yes	Yes
New York . . . . .	Unlimited	Yes	Yes	No	Yes
North Carolina . . . . .	Unlimited	Yes	No	Yes	No
North Dakota . . . . .	Twenty years	Yes	No	Yes	No
Ohio . . . . .	Unlimited	Yes	Yes	Yes	Yes
Oklahoma . . . . .	Twenty years	Yes	No	No	No
Oregon . . . . .	Unlimited	Yes	Yes	Yes	Yes
Pennsylvania . . . . .	Unlimited	Yes	Yes	Yes	Yes
Rhode Island . . . . .	Unlimited	Yes	No	No	Yes
South Carolina . . . . .	Unlimited	Yes	Yes	Yes	Yes
South Dakota . . . . .	Twenty years	Yes	No	No	No
Tennessee . . . . .	Unlimited	Yes	No	Yes	No
Texas . . . . .	Fifty years	Yes	Yes	Yes	No
Utah . . . . .	3 to 100 years	Yes	No	Yes	No
Vermont . . . . .	Unlimited	Yes	Yes	Yes	No
Virginia . . . . .	Unlimited	Yes	No	Yes	Yes
Washington . . . . .	Fifty years	Yes	Yes	Yes	Yes
West Virginia . . . . .	Fifty years	Yes	Yes	Yes	Yes
Wisconsin . . . . .	Unlimited	Yes	No	Yes	Yes
Wyoming . . . . .	Fifty years	Yes	No	Yes	No

TABLE XIV.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>State.</i>	Number of directors re- quired by statute.	Does act expressly con- fer power to issue bonds?	Have corporations power to classify directors?	Does act expressly con- fer power to fill vacancies in board by remaining directors?
Alabama . . . . .	Three up . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Alaska . . . . .	Three up . . . . .	No . . . . .	No . . . . .	Yes . . . . .
Arizona . . . . .	One or more . . . . .	No . . . . .	No . . . . .	No . . . . .
Arkansas . . . . .	Three or more . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
California . . . . .	Three or more . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Colorado . . . . .	Three to thirteen . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Connecticut . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
Delaware . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
District of Columbia . . . . .	Three to fifteen . . . . .	No . . . . .	No . . . . .	Yes . . . . .
Florida . . . . .	One or more . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Georgia . . . . .	One or more . . . . .	Yes . . . . .	No . . . . .	No . . . . .
Hawaii . . . . .	One or more . . . . .	No . . . . .	No . . . . .	No . . . . .
Idaho . . . . .	Three to fifteen . . . . .	No . . . . .	Yes . . . . .	Yes . . . . .
Illinois . . . . .	Five to eleven . . . . .	Yes . . . . .	Yes . . . . .	No . . . . .
Indiana . . . . .	Three to thirteen . . . . .	Yes . . . . .	No . . . . .	No . . . . .
Indian Territory . . . . .	Three or more . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Iowa . . . . .	One or more . . . . .	No . . . . .	No . . . . .	No . . . . .
Kansas . . . . .	Three to twenty-four . . . . .	Yes . . . . .	No . . . . .	No . . . . .
Kentucky . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
Louisiana . . . . .	One or more . . . . .	Yes . . . . .	No . . . . .	No . . . . .
Maine . . . . .	Three or more . . . . .	No . . . . .	Yes . . . . .	No . . . . .
Maryland . . . . .	Four to twelve . . . . .	No . . . . .	No . . . . .	Yes . . . . .
Massachusetts . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
Michigan . . . . .	Three or more . . . . .	No . . . . .	No . . . . .	Yes . . . . .
Minnesota . . . . .	Three to fifteen . . . . .	No . . . . .	Yes . . . . .	No . . . . .
Mississippi . . . . .	One or more . . . . .	Yes . . . . .	No . . . . .	No . . . . .
Missouri . . . . .	Three to thirteen . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
Montana . . . . .	Three to thirteen . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Nebraska . . . . .	One or more . . . . .	No . . . . .	No . . . . .	No . . . . .
Nevada . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
New Hampshire . . . . .	Three or more . . . . .	No . . . . .	No . . . . .	No . . . . .
New Jersey . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
New Mexico . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
New York . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
North Carolina . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
North Dakota . . . . .	Three to eleven . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Ohio . . . . .	Five to fifteen . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Oklahoma . . . . .	Three to eleven . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Oregon . . . . .	Three or more . . . . .	No . . . . .	No . . . . .	No . . . . .
Pennsylvania . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
Rhode Island . . . . .	One or more . . . . .	No . . . . .	No . . . . .	No . . . . .
South Carolina . . . . .	One to nine . . . . .	Yes . . . . .	No . . . . .	No . . . . .
South Dakota . . . . .	Three to eleven . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Tennessee . . . . .	Five or more . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Texas . . . . .	Three to thirteen . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Utah . . . . .	Three to twenty-five . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Vermont . . . . .	Three or more . . . . .	No . . . . .	No . . . . .	No . . . . .
Virginia . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
Washington . . . . .	Two or more . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
West Virginia . . . . .	One or more . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .
Wisconsin . . . . .	Three or more . . . . .	Yes . . . . .	Yes . . . . .	Yes . . . . .
Wyoming . . . . .	Three to nine . . . . .	Yes . . . . .	No . . . . .	Yes . . . . .

TABLE XV.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>States.</i>	Are there any restrictions on power of corporations to hold real estate?	Officers designated by statute to sign stock certificates.	Does act expressly confer power to purchase their own stock?	Does act expressly confer power to change corporate name?
Alabama . . .	No . . .	President and Secretary or Treasurer . . .	No . . .	Yes
Alaska . . .	No . . .	Not designated . . .	No . . .	Yes
Arizona . . .	No . . .	Not designated . . .	No . . .	Yes
Arkansas . . .	No . . .	Not designated . . .	No . . .	Yes
California . . .	No . . .	President and Secretary . . .	No . . .	Yes
Colorado . . .	No . . .	Not designated . . .	Forbidden . . .	Yes
Connecticut . . .	No . . .	Pres. or Vice-Pres. and Sec. or Ass. Sec. and Treas. or Ass. Treas. . .	Yes . . .	Yes
Delaware . . .	No . . .	President and Treasurer . . .	Yes . . .	Yes
Dist. of Columbia . . .	Yes . . .	Not designated . . .	No . . .	No
Florida . . .	Yes . . .	Not designated . . .	No . . .	Yes
Georgia . . .	No . . .	Not designated . . .	No . . .	Yes
Hawaii . . .	No . . .	Not designated . . .	No . . .	Yes
Idaho . . .	Yes . . .	President and Secretary . . .	No . . .	No
Illinois . . .	Yes . . .	Not designated . . .	No . . .	Yes
Indiana . . .	Yes . . .	Treasurer . . .	No . . .	Yes
Indian Territory . . .	No . . .	Not designated . . .	No . . .	Yes
Iowa . . .	No . . .	Not designated . . .	No . . .	Yes
Kansas . . .	No . . .	Not designated . . .	No . . .	Yes
Kentucky . . .	Yes . . .	Not designated . . .	No . . .	Yes
Louisiana . . .	No . . .	Not designated . . .	No . . .	Yes
Maine . . .	No . . .	President or Vice-President and Cashier, Clerk or Treasurer . . .	No . . .	Yes
Maryland . . .	No . . .	Not designated . . .	No . . .	Yes
Massachusetts . . .	No . . .	President and Treasurer . . .	No . . .	Yes
Michigan . . .	Yes . . .	Not designated . . .	No . . .	Yes
Minnesota . . .	Yes . . .	Not designated . . .	No . . .	Yes
Mississippi . . .	No . . .	Not designated . . .	No . . .	Yes
Missouri . . .	No . . .	Not designated . . .	No . . .	Yes
Montana . . .	Yes . . .	President and Secretary . . .	No . . .	Yes
Nebraska . . .	Yes . . .	Not designated . . .	No . . .	No
Nevada . . .	No . . .	Pres. or Vice-Pres. and Sec. or Treas. . .	No . . .	Yes
New Hampshire . . .	No . . .	Treasurer or Cashier . . .	No . . .	Yes
New Jersey . . .	No . . .	President and Treasurer . . .	Yes . . .	Yes
New Mexico . . .	No . . .	President and Secretary . . .	Yes . . .	Yes
New York . . .	No . . .	Pres. or Vice-Pres. and Sec. or Treas. . .	No . . .	Yes
North Carolina . . .	No . . .	President and Secretary or Treasurer . . .	No . . .	Yes
North Dakota . . .	No . . .	President and Secretary . . .	No . . .	Yes
Ohio . . .	No . . .	President and Secretary . . .	No . . .	Yes
Oklahoma . . .	No . . .	President and Secretary . . .	Yes . . .	Yes
Oregon . . .	No . . .	Not designated . . .	No . . .	Yes
Pennsylvania . . .	Yes . . .	Pres. or Vice-Pres. and Treas. . .	No . . .	Yes
Rhode Island . . .	Yes . . .	Not designated . . .	No . . .	Yes
South Carolina . . .	No . . .	Treasurer or Secretary . . .	No . . .	Yes
South Dakota . . .	No . . .	President and Secretary . . .	Yes . . .	Yes
Tennessee . . .	No . . .	Not designated . . .	No . . .	Yes
Texas . . .	Yes . . .	Not designated . . .	No . . .	Yes
Utah . . .	No . . .	Not designated . . .	No . . .	Yes
Vermont . . .	No . . .	Not designated . . .	No . . .	Yes
Virginia . . .	Yes . . .	Pres. or Vice-Pres. and Treas. etc. . .	Yes . . .	Yes
Washington . . .	No . . .	Not designated . . .	No . . .	Yes
West Virginia . . .	Yes . . .	President or Vice-President, etc. . .	Yes . . .	Yes
Wisconsin . . .	Yes . . .	Not designated . . .	No . . .	Yes
Wyoming . . .	No . . .	Not designated . . .	No . . .	Yes

INCORPORATION AND ORGANIZATION OF CORPORATIONS.

TABLE XVI.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>States.</i>	Does act expressly confer power to increase or decrease capital stock?	Does act expressly confer power to change corporate purposes?	Does act expressly confer power to change number of directors?	Does act expressly confer power to change corporate domicile or place for transaction of business?	Can any kind of business be incorporated under the General Incorporation Act?
Alabama . . . . .	Yes	Yes	Yes	Yes	Yes
Alaska . . . . .	Yes	Yes	Yes	Yes	No
Arizona . . . . .	Yes	Yes	Yes	Yes	Practically so
Arkansas . . . . .	Yes	Yes	Yes	Yes	No
California . . . . .	Yes	Yes	Yes	Yes	No
Colorado . . . . .	Yes	No	Yes	Yes	No
Connecticut . . . . .	Yes	Yes	Yes	Yes	Yes
Delaware . . . . .	Yes	Yes	Yes	Yes	Practically so
District of Columbia . . . . .	Yes	Yes	No	No	No
Florida . . . . .	Yes	Yes	Yes	Yes	No
Georgia . . . . .	Yes	Yes	Yes	Yes	No
Hawaii . . . . .	Yes	Yes	Yes	Yes	No
Idaho . . . . .	Yes	No	Yes	Yes	No
Illinois . . . . .	Yes	Yes	Yes	Yes	No
Indiana . . . . .	Yes	Yes	Yes	Yes	No
Indian Territory . . . . .	Yes	Yes	Yes	Yes	No
Iowa . . . . .	Yes	Yes	Yes	Yes	No
Kansas . . . . .	Yes	Yes	Yes	Yes	No
Kentucky . . . . .	Yes	Yes	Yes	Yes	No
Louisiana . . . . .	Yes	Yes	Yes	Yes	No
Maine . . . . .	Yes	No	Yes	Yes	No
Maryland . . . . .	Yes	No	No	No	No
Massachusetts . . . . .	Yes	Yes	Yes	Yes	No
Michigan . . . . .	Yes	Yes	Yes	Yes	No
Minnesota . . . . .	Yes	Yes	Yes	No	No
Mississippi . . . . .	Yes	Yes	Yes	Yes	No
Missouri . . . . .	Yes	Yes	Yes	Yes	No
Montana . . . . .	Yes	Yes	Yes	Yes	No
Nebraska . . . . .	Yes	Yes	Yes	No	No
Nevada . . . . .	Yes	Yes	Yes	Yes	Yes
New Hampshire . . . . .	Yes	Yes	Yes	Yes	No
New Jersey . . . . .	Yes	Yes	Yes	Yes	No
New Mexico . . . . .	Yes	Yes	Yes	Yes	Practically so
New York . . . . .	Yes	Yes	Yes	Yes	No
North Carolina . . . . .	Yes	Yes	Yes	Yes	No
North Dakota . . . . .	Yes	Yes	Yes	Yes	No
Ohio . . . . .	Yes	No	Yes	Yes	No
Oklahoma . . . . .	Yes	Yes	Yes	Yes	Practically so
Oregon . . . . .	Yes	Yes	Yes	Yes	Practically so
Pennsylvania . . . . .	Yes	Yes	Yes	Yes	No
Rhode Island . . . . .	Yes	Yes	Yes	Yes	No
South Carolina . . . . .	Yes	No	No	No	Yes
South Dakota . . . . .	Yes	Yes	Yes	Yes	No
Tennessee . . . . .	Yes	Yes	Yes	Yes	No
Texas . . . . .	Yes (increase)	Limited	Yes	Yes	No
Utah . . . . .	Yes	Yes	Yes	Yes	No
Vermont . . . . .	Yes	Yes	Yes	Yes	No
Virginia . . . . .	Yes	Yes	Yes	Yes	Yes
Washington . . . . .	Yes	Yes	Yes	Yes	No
West Virginia . . . . .	Yes	Yes	Yes	Yes	Yes
Wisconsin . . . . .	Yes	Yes	Yes	Yes	No
Wyoming . . . . .	Yes	Yes	Yes	Yes	No

QUESTIONS AND ANSWERS RELATIVE TO CORPORATION ACTS.

TABLE XVII.

TABULATED QUESTIONS AND ANSWERS (*Continued*).

<i>States.</i>	Have corporations power to surrender charter before organization?	Have corporations power to forfeit stock for non-payment of assessments?	Does act expressly confer power to enlarge or diminish corporate powers?	Length of statutory extension of corporate existence for purpose of winding up corporate affairs.
Alabama . . . . .	No	Yes	Yes	Five years
Alaska . . . . .	No	Yes	No	Three years
Arizona . . . . .	No	No	No	None designated
Arkansas . . . . .	No	Yes	No	None designated
California . . . . .	No	Yes	No	None designated
Colorado . . . . .	No	Yes	No	None designated
Connecticut . . . . .	No	Yes	Yes	None designated
Delaware . . . . .	Yes	Yes	Yes	All necessary time
District of Columbia . . . . .	No	Yes	No	None designated
Florida . . . . .	No	Yes	No	Three years
Georgia . . . . .	No	Yes	No	None designated
Hawaii . . . . .	No	Yes	No	None designated
Idaho . . . . .	No	Yes	No	None designated
Illinois . . . . .	No	Yes	No	Two Years
Indiana . . . . .	No	Yes	No	Three years
Indian Territory . . . . .	No	Yes	No	None designated
Iowa . . . . .	No	No	No	None designated
Kansas . . . . .	No	Yes	No	Any necessary period
Kentucky . . . . .	No	Yes	No	Any necessary period
Louisiana . . . . .	No	No	No	None designated
Maine . . . . .	Yes	Yes	No	Three years
Maryland . . . . .	No	Yes	No	All necessary time
Massachusetts . . . . .	Yes	Yes	No	Three years
Michigan . . . . .	No	Yes	No	Three years
Minnesota . . . . .	No	Yes	No	Three years
Mississippi . . . . .	No	Yes	No	Three years
Missouri . . . . .	No	Yes	No	None designated
Montana . . . . .	No	Yes	No	None designated
Nebraska . . . . .	No	Yes	No	None designated
Nevada . . . . .	Yes	Yes	Yes	None designated
New Hampshire . . . . .	No	Yes	No	Three years
New Jersey . . . . .	Yes	Yes	Yes	None designated
New Mexico . . . . .	Yes	Yes	Yes	None designated
New York . . . . .	Yes	Yes	Yes	None designated
North Carolina . . . . .	Yes	Yes	Yes	Three years
North Dakota . . . . .	No	Yes	No	None designated
Ohio . . . . .	Yes	Yes	No	None designated
Oklahoma . . . . .	No	Yes	No	None designated
Oregon . . . . .	No	Yes	No	Five years
Pennsylvania . . . . .	No	Yes	No	None designated
Rhode Island . . . . .	No	Yes	No	Three years
South Carolina . . . . .	No	Yes	No	None designated
South Dakota . . . . .	No	Yes	No	None designated
Tennessee . . . . .	No	Yes	Yes	Five years
Texas . . . . .	No	Yes	No	None designated
Utah . . . . .	No	Yes	Yes	None designated
Vermont . . . . .	No	Yes	No	Three years
Virginia . . . . .	Yes	Yes	Yes	None designated
Washington . . . . .	No	Yes	No	None designated
West Virginia . . . . .	Yes	Yes	Yes	None designated
Wisconsin . . . . .	Yes	Yes	Yes	Three years
Wyoming . . . . .	No	Yes	No	None designated







TABLE  
STATEMENT OF TAXES AND FEES IM  
CAPITAL

	\$2,000		\$5,000		\$25,000		\$50,000		\$100,0	
	ORIGINAL LICENSE TAX	ANNUAL LICENSE TAX	ORIGINAL LICENSE TAX	ANNUAL LICENSE TAX	ORIGINAL LICENSE TAX	ANNUAL LICENSE TAX	ORIGINAL LICENSE TAX	ANNUAL LICENSE TAX	ORIGINAL LICENSE TAX	ANNUAL LICENSE TAX
ALABAMA . . .	\$2.00	\$3.00	\$5.00	\$7.50	\$25.00	\$37.50	\$50.00	\$75.00	\$100.00	\$150.00
ALASKA . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
ARIZONA . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
ARKANSAS . . .	30.00	.....	30.00	.....	30.00	.....	35.00	.....	45.00	.....
CALIFORNIA . . .	15.00	10.00	15.00	10.00	15.00	10.00	25.00	10.00	50.00	.....
COLORADO . . .	30.00	0.08	30.00	2.00	30.00	1.00	30.00	2.00	45.00	.....
CONNECTICUT . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
DELAWARE . . .	50.00	.....	50.00	.....	50.00	.....	50.00	.....	50.00	.....
DIS. OF COL. . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
FLORIDA . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
GEORGIA . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
HAWAII . . .	50.00	150.00	50.00	150.00	50.00	150.00	50.00	150.00	50.00	.....
IDAHO . . .	5.00	.....	5.00	.....	5.00	.....	10.00	.....	10.00	.....
ILLINOIS . . .	30.00	.....	50.00	.....	70.00	.....	95.00	.....	145.00	.....
INDIANA . . .	25.00	.....	25.00	.....	25.00	.....	50.00	.....	100.00	.....
INDIAN TER. . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
IOWA . . .	25.00	.....	25.00	.....	40.00	.....	65.00	.....	115.00	.....
KANSAS . . .	27.00	.....	30.00	.....	50.00	.....	75.00	.....	125.00	.....
KENTUCKY . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
LOUISIANA . . .	No license taxes imposed.			A license tax is imposed upon gross receipts of manufacturing						
MAINE . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
MARYLAND . . .	25.00	.....	25.00	.....	25.00	.....	25.00	.....	25.00	.....
MASSACHUSETTS . . .	25.00	0.20	25.00	0.50	25.00	2.50	25.00	5.00	25.00	.....
MICHIGAN . . .	25.00	.....	25.00	.....	25.00	.....	25.00	.....	50.00	.....
MINNESOTA . . .	50.00	.....	50.00	.....	50.00	.....	50.00	.....	75.00	.....
MISSISSIPPI . . .	15.00	.....	15.00	.....	15.00	.....	15.00	.....	15.00	.....
MISSOURI . . .	60.00	.....	60.00	.....	60.00	.....	60.00	.....	85.00	.....
MONTANA . . .	20.00	.....	20.00	.....	20.00	.....	25.00	.....	50.00	.....
NEBRASKA . . .	10.00	.....	10.00	.....	10.00	.....	10.00	.....	10.00	.....
NEVADA . . .	The Retaliatory System of taxation is in force in Nevada			.....	.....	.....	.....	.....	.....	.....
N. HAMPSHIRE . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
N. JERSEY . . .	The Retaliatory System of taxation is in force in New Jersey			.....	.....	.....	.....	.....	.....	.....
N. MEXICO . . .	25.00	.....	25.00	.....	25.00	.....	25.00	.....	25.00	.....
N. YORK . . .	.....	2.00	.....	5.00	.....	25.00	.....	50.00	.....	.....
N. CAROLINA . . .	10.00	5.00	10.00	5.00	10.00	5.00	10.00	10.00	10.00	.....
N. DAKOTA . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
OHIO . . .	10.00	2.00	10.00	5.00	25.00	25.00	50.00	50.00	100.00	.....
OKLAHOMA . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
OREGON . . .	50.00	10.00	50.00	10.00	50.00	20.00	50.00	30.00	50.00	.....
PENNSYLVANIA . . .	6.00	10.00	15.00	50.00	75.00	125.00	150.00	250.00	300.00	.....
R. ISLAND . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
S. CAROLINA . . .	5.00	1.00	5.00	2.50	12.50	12.50	25.00	25.00	50.00	.....
S. DAKOTA . . .	No license taxes imposed			.....	.....	.....	.....	.....	.....	.....
TENNESSEE . . .	50.00	.....	50.00	.....	50.00	.....	50.00	.....	50.00	.....
TEXAS . . .	25.00	25.00	25.00	25.00	35.00	25.00	45.00	50.00	70.00	.....
UTAH . . .	0.50	.....	1.25	.....	6.25	.....	12.50	.....	25.00	.....
VERMONT . . .	.....	10.00	.....	10.00	.....	10.00	.....	10.00	.....	.....
VIRGINIA . . .	10.00	5.00	10.00	5.00	10.00	10.00	10.00	10.00	20.00	.....
WASHINGTON . . .	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	.....
W. VIRGINIA . . .	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	.....
WISCONSIN . . .	25.00	.....	25.00	.....	25.00	.....	50.00	.....	100.00	.....
WYOMING . . .	5.00	.....	5.00	.....	10.00	.....	10.00	.....	10.00	.....

XVIII.

POSED UPON FOREIGN CORPORATIONS.

ZATION.

	\$200,000		\$500,000		\$1,000,000		\$5,000,000		APPROXIMATE SUNDAY FIRM.
VAL DATE EX	ORIGINAL LICENSE TAX	ANNUAL LICENSE TAX	ORIGINAL LICENSE TAX	ANNUAL LICENSE TAX	ORIGINAL LICENSE TAX	ANNUAL LICENSE TAX	ORIGINAL LICENSE TAX	ANNUAL LICENSE TAX	
0.00	\$200.00	\$300.00	\$500.00	\$750.00	\$1000.00	\$1500.00	\$5000.00	\$7500.00	Nominal
...	...	...	...	...	...	...	...	...	Nominal
...	...	...	...	...	...	...	...	...	\$40.00
...	65.00	...	95.00	...	195.00	...	975.00	...	29.50
0.00	50.00	10.00	75.00	10.00	100.00	10.00	500.00	10.00	10.00
0.00	75.00	8.00	165.00	20.00	315.00	40.00	1515.00	200.00	12.00
...	...	...	...	...	...	...	...	...	16.00
...	50.00	...	50.00	...	50.00	...	50.00	...	10.00
...	...	...	...	...	...	...	...	...	None
...	...	...	...	...	...	...	...	...	None
...	...	...	...	...	...	...	...	...	Nominal
0.00	50.00	150.00	50.00	150.00	50.00	250.00	50.00	1250.00	Nominal
...	20.00	...	20.00	...	25.00	...	25.00	...	5.00
...	245.00	...	545.00	...	1045.00	...	5045.00	...	7.00
...	200.00	...	500.00	...	1000.00	...	5000.00	...	5.00
...	...	...	...	...	...	...	...	...	5.00
...	215.00	...	515.00	...	1015.00	...	5015.00	...	5.00
...	175.00	...	825.00	...	525.00	...	1325.00	...	5.00
...	...	...	...	...	...	...	...	...	5.00
...	...	...	...	...	...	...	...	...	5.00
...	...	...	...	...	...	...	...	...	None
...	25.00	...	25.00	...	25.00	...	25.00	...	Nominal
0.00	25.00	20.00	25.00	50.00	25.00	100.00	25.00	500.00	Nominal
...	100.00	...	250.00	...	500.00	...	2500.00	...	5.00
...	125.00	...	275.00	...	525.00	...	2525.00	...	5.00
...	15.00	...	15.00	...	15.00	...	15.00	...	5.00
...	135.00	...	285.00	...	535.00	...	2535.00	...	3.00
...	90.00	...	185.00	...	285.00	...	685.00	...	5.00
...	20.00	...	50.00	...	100.00	...	500.00	...	5.00
...	...	...	...	...	...	...	...	...	10.00
...	...	...	...	...	...	...	...	...	...
...	25.00	...	50.00	...	100.00	...	500.00	...	10.00
...	...	...	...	...	...	...	...	...	22.00
0.00	...	200.00	...	500.00	...	1000.00	...	5000.00	11.00
0.00	20.00	50.00	50.00	100.00	100.00	200.00	100.00	500.00	5.00
...	...	...	...	...	...	...	...	...	25.00
0.00	200.00	200.00	500.00	500.00	1000.00	1000.00	5000.00	5000.00	12.00
...	...	...	...	...	...	...	...	...	11.25 to 20.00
0.00	50.00	70.00	50.00	100.00	50.00	125.00	50.00	200.00	5.00
0.00	600.00	1000.00	1500.00	2500.00	3000.00	5000.00	15,000.00	25,000.00	10.75
...	...	...	...	...	...	...	...	...	1.50
0.00	100.00	100.00	250.00	250.00	500.00	500.00	2500.00	2500.00	17.00
...	...	...	...	...	...	...	...	...	10.00
...	100.00	...	150.00	...	200.00	...	250.00	...	40.00
0.00	120.00	120.00	270.00	180.00	520.00	280.00	2520.00	480.00	Nominal
...	50.00	...	125.00	...	250.00	...	1250.00	...	11.00
0.00	...	25.00	...	50.00	...	50.00	...	50.00	4.00
0.00	40.00	20.00	100.00	25.00	600.00	25.00	600.00	25.00	10.00
0.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	Nominal
0.00	100.00	100.00	100.00	100.00	150.00	150.00	810.00	810.00	15.00
...	200.00	...	500.00	...	1000.00	...	5000.00	...	Nominal
...	15.00	...	30.00	...	55.00	...	255.00	...	3.50



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